

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

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| PJM Interconnection, L.L.C. |) | Docket No. ER26-1479-000 |
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**JOINT PROTEST AND COMMENTS OF
INDUSTRIAL CUSTOMER ORGANIZATIONS AND AMTRAK**

Pursuant to Rule 211 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure¹ and the Combined Notice of Filings #1 issued on February 24, 2026,² the PJM Industrial Customer Coalition (“PJMICC”), the Industrial Energy Consumers of America (“IECA”), the American Forest and Paper Association (“AF&PA”) (collectively, “Industrials”), and the National Railroad Passenger Corporation (“Amtrak”) hereby file this Joint Protest and Comments in response to PJM Interconnection, L.L.C.’s (“PJM”) *60-Day Compliance Filing for Co-Located Load Related Revisions to Open Access Transmission Tariff to Comply with Commission Order in Docket No. EL25-49, et al.* (“Compliance Filing”), which was filed on February 23, 2026, in the above-captioned docket.

As demonstrated herein and in the supporting affidavit of James R. Dauphinais (“Dauphinais Affidavit”), the Commission should find that certain material components of the Compliance Filing are not compliant with the December 18, 2025, Order (“Order”) issued in Docket No. EL25-49.³ The Industrials/Amtrak respectfully request that the Commission reject

¹ 18 C.F.R. § 385.211 (2025).

² Combined Notice of Filings #1, *PJM Interconnection, L.L.C.*, Docket No. ER26-1479-000.

³ Order on Show Cause Proceeding, Directing Compliance Filings, Establishing Paper Hearing, and Granting In Part and Denying In Part Complaint, Docket Nos. EL25-49-000, EL25-49-001, AD24-11-000, EL25-20-000 (“Consolidated Dockets”) (Dec. 18, 2025) (“Order”).

PJM's Compliance Filing and direct PJM to file a new compliance filing, consistent with the Protest and Comments herein.

I. BACKGROUND

On December 18, 2025, the Commission issued the Order, finding that the PJM Tariff is unjust and unreasonable due to the lack of specificity for the rates, terms, and conditions that apply to Co-Located Load and directing PJM to make several compliance and informational filings. The Order also addressed PJM's Retail Behind-the-Meter Generation ("BTMG") rules, finding that "circumstances have changed since the Commission approved PJM's retail BTMG rules such that these rules are no longer just and reasonable."⁴ Specifically, the Commission stated, "We therefore find that PJM's BTMG rules are no longer consistent with cost causation principles, because large loads configured in a BTMG arrangement with significant generation will raise cost shifting concerns compared to loads pursuing smaller amounts of netting."⁵ The Commission directed PJM to file a compliance filing within 60 days of the Order, to: (1) revise the BTMG rules pursuant to the Order; (2) propose a "new MW [megawatt] threshold for the amount of load that Network Customers may net by using BTMG" ("Retail Threshold"); and (3) "establish a transition period for Network Customers already using the BTMG rules."⁶ The Commission later extended PJM's deadline to file its compliance filing by seven days.⁷

On February 23, 2026, PJM filed the Compliance Filing in Docket No. ER26-1479-000. PJM convened several stakeholder workshops to solicit input on PJM's compliance filing.

⁴ *Id.* at P 186.

⁵ *Id.*

⁶ *Id.*, Ordering Paragraph (F).

⁷ Notice of Extension of Time, Docket Nos. EL25-49-000, EL25-49-001, AD24-11-000, EL25-20-000 (Jan. 23, 2026).

On February 24, 2026, the Industrials separately intervened in the above-captioned docket.⁸ On March 11, 2026, Amtrak intervened in the above-captioned docket. Many other parties subsequently intervened, as well.⁹

II. THE INDUSTRIALS/AMTRAK

The Industrials include associations of leading American manufacturing companies, trade-exposed electricity users, institutional users, and other energy-intensive customers. Together, Industrials represent well over \$1 trillion in sales, including thousands of manufacturing facilities and millions of family-sustaining jobs in the United States. The Industrials produce the raw materials and inputs necessary for sustaining commerce and our overall standard of living. Manufacturing employs over 15 million people in the United States¹⁰ 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).¹¹ Manufacturing is unique compared to all other sectors. Manufacturers are energy intensive, frequently operate 24/7, are price sensitive, and compete globally. Small changes in electricity prices can have significant impacts on the competitiveness of existing facilities and serious implications for reshoring and expanding facilities and production capabilities in the United States. Unlike the surge in large-load demands from data centers and computational workloads, most manufacturers are simply trying to survive and keep their facilities

⁸ PJMICC and IECA (together, “Requestors”) jointly filed a Request For Clarification or, in the Alternative, Rehearing of the Industrial Customer Coalitions (“Rehearing Request”) on January 20, 2026, in Docket No. EL25-49-000 and the other Consolidated Dockets. Nothing herein should be construed to modify the Rehearing Request. The Requestors and the Industrials/Amtrak reserve their rights to supplement or modify this Protest and Comments in response to any order on rehearing.

⁹ PJM filed a letter on February 24, 2026, in Docket Nos. EL25-49 and ER26-1479, confirming that the Compliance Filing was filed on February 23, 2026, and requesting a placeholder effective date for the proposed tariff revisions.

¹⁰ See U.S. Bureau of Labor Statistics (2024 data), available at <https://www.bls.gov/cps/cpsaat18.htm> (last accessed Mar. 12, 2026).

¹¹ See U.S. Manufacturing Economy, NIST, available at <https://www.nist.gov/el/applied-economics-office/manufacturing/manufacturing-economy/total-us-manufacturing> (last accessed Mar. 12, 2026).

operational and financially healthy amid ever-rising operational costs. For manufacturers positioned to expand facilities, expansion is done in a careful and deliberate manner, with years of planning and investment prior to committing to a facility addition or expansion. Many of the Industrials' members have constructed, maintained, and operate substantial BTMG units that are designed for operational efficiency and are deeply integrated into their industrial processes. These industrial customers span 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. The Industrials also comprise other institutional and service customers, such as universities and hospitals, some of which also operate retail BTMG and, as such, will suffer the same economic consequences described herein.

Amtrak is a corporation authorized by the Rail Passenger Service Act of 1970, currently set forth at 49 U.S.C. §§ 24101, *et seq.* Amtrak provides passenger rail service across the continental United States, including within the PJM footprint. Amtrak consumes substantial amounts of electricity in its operations and requires reliable electric service to support its operations. While Amtrak is not a manufacturer, it is also an industrial customer of utility services. For many years, Amtrak has harnessed retail BTMG within PJM to support its business operations and reliability imperatives. Amtrak's interests align with the Industrials and reflect the wide-ranging types of bespoke retail BTMG arrangements that support the region's and the nation's economy.

Considering the significant impact of BTMG rule changes on these customers, as well as the important role BTMG plays in resource adequacy considerations, the Industrials/Amtrak respectfully file this Protest and Comments. The Industrials/Amtrak sincerely appreciate PJM's outreach to stakeholders in developing its Compliance Filing. PJM has identified and included the

key compliance issues within its filing. While the identified issues are on target, a few key changes are necessary to meet the objectives set forth in the Order. As described further below: (1) PJM’s proposed retail netting eligibility for qualifying facilities (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”) is appropriate, but it should not be linked to QF status as of the date of the Order; (2) the Retail Threshold should be at least 200 MW or more, not 50 MW;¹² and (3) eligibility for BTMG netting should be “up to” the Retail Threshold, as indicated in the Order,¹³ rather than categorically disqualifying a retail customer from netting any of its load if the retail customer’s on-site generation exceeds the Retail Threshold. With these changes, the Commission can approve BTMG rules that effectuate the goals of the Order while maintaining a vibrant piece of the resource adequacy puzzle, currently built and maintained by America’s industrial and transportation backbone.

III. EXECUTIVE SUMMARY

The Order advances changes designed to address the rapid and sweeping emergence of super-sized computational load additions with speed-to-power requirements across the PJM footprint.¹⁴ For generators with on-site load (and load with on-site generation), the Order substantially overhauls how transmission services are procured, reserved, and paid.

Although focused on Co-Located Load, the Commission’s broader, potentially unlimited

¹² As explained in the supporting Dauphinais Affidavit, evidence from the Midcontinent Independent System Operator, Inc. (“MISO”), region supports a threshold of at least 300 MW. *See* Dauphinais Affidavit at PP 65-67 (referencing Michigan Public Service Commission Case No. U-21859).

¹³ *See* Order at PP 221 (directing 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”).

¹⁴ Order at P 4 (“As explained in the Show Cause Order, Co-Location Arrangements are becoming increasingly common in PJM and, since the issuance of the Show Cause Order, entities continue to raise issues involving Co-Location Arrangements with the Commission”); *id.* at P 186 (“We find that circumstances have changed since the Commission approved PJM’s retail BTMG rules such that these rules are no longer just and reasonable”); *id.*, Concurrence of David Rosner at P 10 (stating that the Order “protects existing customers . . . by directing PJM to assign transmission costs to ensure that a co-located load, such as a data center, always pays its fair share”).

findings regarding BTMG have profound implications for existing and future retail customers who have built—or want to build—on-site generation outside the data center industry. Over decades, billions of dollars have been invested by American manufacturers, nonprofit institutions, the transportation sector, and others in support of a more efficient, powerful, and resilient grid. Customers have developed on-site generation to minimize the amount of load they place on the transmission system and, in many cases, to support thermal needs such as heating facilities, operating chillers, or using steam in the manufacturing process. These behind-the-meter facilities are all products of long-term investments, but they come in countless configurations, unique to industry or institutional need, built for efficiency, and operated over long periods of time.

As demonstrated herein and in the attached Dauphinais Affidavit, these on-site generating facilities also provide critical benefits to the larger grid. These benefits are both 1) indirect: reducing large loads on the system and operating efficiently to reduce congestion and/or transmission system build-out; and 2) direct: being able to operate during system emergencies.¹⁵ This is true for manufacturers that produce essential products for everyday life as well as for Amtrak. For example, the retail BTMG that Amtrak relies on, generated at 25 Hertz (“Hz”), provides the only black-start capability for Amtrak’s south end of its Northeast Corridor (“NEC”) traction power system if the 60 Hz power grid goes out of service.

These traditional loads differ from most of today’s large-load entrants in both size and type. These traditional load configurations are neither the essential cause of the current changed circumstances on the grid, nor do they present the reliability risks posed by super-sized, inverter-

¹⁵ Compliance Filing at 13. Notably, the Department of Energy (“DOE”) recently issued an order indicating that it may rely on industrial customers’ generation during emergencies. *See* U.S. Department of Energy, Emergency Order No. 202-26-06 (issued Jan. 26, 2026). The generation that DOE refers to in Order No. 202-26-06 is, to a great extent, the retail BTMG at issue in this docket.

based loads rapidly seeking to come online today.¹⁶ Consequently, the Commission should establish a sufficiently high Retail Threshold to prevent damage to industrial, institutional, transportation, and other customers who wish to invest in (and maintain) existing on-site generation.

It is difficult to overstate the importance of how FERC ultimately defines the Retail Threshold. A too-low Retail Threshold will dramatically increase energy costs for many existing businesses with BTMG, to the point that many major on-site generation units will become uneconomic.¹⁷ For units remaining in operation, it will remove a crucial incentive to operate efficiently and during key hours.¹⁸ Further, it will raise legal questions about how PURPA QFs will obtain the back-up power required under current law and regulation. Perhaps most concerning, a too-low Retail Threshold will discourage future on-site generation investments by institutions and industry at the very time the energy industry is desperately seeking new resources, and the nation is seeking to reshore and expand U.S. manufacturing. Failure to get the Retail Threshold “right-sized” will harm both resource adequacy and the broader economy.

Additionally, a too-low Retail Threshold creates substantially more work for PJM to study and process generators seeking to enter the wholesale market, as well as generator deactivations that will occur. A too-low Retail Threshold will create the need for significantly expanded and complex metering installation at some sites; it will cause projects in the planning process at various

¹⁶ See Dauphinais Affidavit at PP 22-26, 32.

¹⁷ See *id.* at P 17 (“The ability to continue operation in a safe and environmentally compliant manner within the bounds of what can be supported by the remaining thermal capability of the Cogeneration Facility at just and reasonable electric power rates is a critical requirement to ensure the retail customer can economically meet the needs of its own customers and clients. If that ability cannot be assured, cogeneration may fail to be a practical and/or economic solution to the retail customer’s needs, causing the efficiency benefits of cogeneration to be forgone and/or the retail customer to become economically unviable.”). See also Compliance Filing at 12-15.

¹⁸ Dauphinais Affidavit at P 36 (explaining that the netting construct “sends a strong cost signal for retail behind the meter generation to operate and fully serve the electric load of their host retail customer during times of grid stress”).

industrial, manufacturing, or institutional customers to be reworked or abandoned; and it will generate confusion as scores of retail customers will have to evaluate, and perhaps undertake, PJM membership and compliance with a vastly different set of rules than retail customers are accustomed. For many retail customers, these are substantial burdens that will materially impact investment decisions as well as decisions on whether to continue to operate their retail BTMG.¹⁹ The Industrials/Amtrak respectfully submit that the FERC should avoid imposing these burdens any further than necessary to effectuate the Order's broader reliability goals.

While the Compliance Filing takes positive steps toward optimal resolutions of questions in the Order, the Industrials/Amtrak protest several particulars of the Compliance Filing, as follows:

First, PURPA QFs should be eligible for retail netting for their full load, but such eligibility should not be linked to QF status as of the date of the Order. As explained below and in the Dauphinais Affidavit, the efficiency and configuration of QFs are such that retail BTMG netting is an appropriate mechanism to ensure QFs have their back-up power needs met; without retail netting, QFs may be denied the back-up service to which they are entitled by law under PURPA. Additionally, for cogeneration QFs (which are the only QFs larger than 80 MW), the BTMG netting construct aligns with their efficient, reliable energy production configurations, matching the intent of Congress and the FERC. Finally, not all QF-eligible entities have maintained QF status because PURPA permits the Commission to deem certain QFs as having sufficient market access that it removes (for those QFs) the utility's obligation to purchase excess power generated by the QF. In some cases, units that could qualify as QFs did not seek or maintain QF status. However, these units operate on the same principles and could seek QF status to ensure they retain

¹⁹ See Compliance Filing at 12-13.

access to back-up power, as set forth in PURPA's implementing regulations. As a result, without a reasonable back-up transmission option, limiting retail BTMG eligibility to units with QF status as of December 18, 2025, would put PURPA's requirements and the order on compliance in this proceeding in conflict. Additionally, maintaining retail netting for QFs effectuates Congressional intent, with QFs serving as a statutorily authorized vehicle to support policies favoring cogeneration.²⁰

Second, the FERC should approve a Retail Threshold of at least 200 MW. PJM's proposed Retail Threshold of 50 MW is not only factually unsupported, but it is also insufficient to address the worst of the harms to industrial, institutional, and other retail customers. In contrast, a Retail Threshold of at least 200 MW best addresses the FERC's reliability concerns while limiting the harm to resource adequacy if the Retail Threshold is set too low. As set forth below and in the Dauphinais Affidavit, the typical data center coming online today consumes more than 200 MW, and concrete evidence supports a Retail Threshold of up to 300 MW.²¹ A 200 MW Retail Threshold better captures the large load growth driving reliability and cost-shifting concerns, while maintaining a structure that prompts critical smaller resource adequacy investments and avoids severe economic damage to America's industrial, institutional, and transportation sectors. A 200 MW Retail Threshold also eliminates most grandfathering issues, thereby simplifying the major transition process initiated by the Order.

Third, retail netting eligibility should be "up to" the full amount of the Retail Threshold, as indicated in the Order, rather than disqualifying a retail customer from retail netting for any amount of load if their on-site generation were to exceed the Retail Threshold. PJM is proposing

²⁰ 16 U.S. Code § 824a-3(a).

²¹ See Section IV.B, *infra*; see also Dauphinais Affidavit at PP 65-69.

that, if the Retail Threshold is 50 MWs, and a retail customer's BTMG is 57 MWs, the retail customer would not be eligible for *any* netting for the initial 50 MWs. PJM's approach conflicts with the intent of the Order. The Industrials/Amtrak's proposal, which is based on the plain language of the Order, would mean if the Retail Threshold were 50 MWs (and as argued herein, evidence supports a much higher Retail Threshold), and a retail customer's BTMG is 57 MWs, the retail customer should be eligible for netting for the first 50 MWs and not be eligible for netting for the remaining 7 MWs. Not only does an "up to" approach comply with the Order, but it also reduces discrimination concerns and avoids an incentive "cliff" that encourages retail customers to size their generation smaller than they otherwise would, or that causes projects slightly over the limit to change dramatically.

Beyond these areas of Protest, the Industrials/Amtrak offer brief Comments on two other aspects of the Compliance Filing. Regarding grandfathering of existing contracts, the Industrials/Amtrak emphasize that the agreements under which existing BTMG customers operate are varied and include agreements with utilities, some of which renew year-to-year. These agreements should be recognized as eligible for grandfathering, consistent with PJM's Compliance Filing, to enable these facilities to continue operating. Due to the dramatic cost increases that will occur for existing units removed from BTMG status, it is critical that BTMG retail customers be able to easily verify their grandfathering status. Most retail customers, particularly manufacturing companies whose load and generation are tightly interwoven (*i.e.*, cogeneration facilities), cannot afford regulatory ambiguity about whether their units qualify for retail BTMG netting.

Finally, if the Commission opts for a generation-based Retail Threshold, the Industrials/Amtrak support PJM's proposed tariff provision clarifying that back-up generation usable only during specified conditions should not count toward the Retail Threshold.

IV. PROTEST

In the Order, the Commission recognized an inherent tension: PJM’s retail BTMG rules, which have been deemed just and reasonable in the past, still provide significant benefits and should be maintained—but with limits beyond which loads sited with generation would be treated differently. The FERC asked PJM to propose a Retail Threshold because “not all loads using BTMG are large loads that create the reliability and resource adequacy risks described” in the Order.²² The Commission also stated that other parties would have an opportunity to weigh in on the proposed Retail Threshold.

The FERC reviews compliance filings for whether the public utility has complied with the requirements of the underlying order.²³ Consequently, the principles that should guide the ultimate selection of a Retail Threshold are set forth in the Order itself—namely, to define and respond to the “reliability and resource adequacy” risks and the cost-shifting risks that the Commission sought to address in the Order.²⁴ Specifically, the FERC expressed concern about the potential for large loads to rely on the transmission system and grid without PJM adequately planning for them.²⁵ The Commission found that “circumstances have changed” since the existing BTMG rules were initially approved, such that the PJM retail netting rules are no longer just and reasonable.²⁶ The

²² Order at P 221.

²³ See, e.g., *Southwest Power Pool, Inc.*, Order on Compliance, 194 FERC ¶ 61,047 at P 1, available at https://www.spp.org/documents/75765/20260122_order_order%20nos.%202023%20and%202023-a%20second%20compliance%20filing_er24-2026-001%2C%20002.pdf.

²⁴ Order at P 179.

²⁵ *Id.* at P 186. As to retail BTMG, the Commission found that BTMG rules “are no longer just and reasonable because loads with BTMG are not fully accounted for in resource adequacy planning and shift costs onto other transmission customers contrary to the Commission’s cost causation principles.” Order at P 2. The Commission also stated, “PJM’s BTMG rules are no longer consistent with cost causation principles, because large loads configured in a BTMG arrangement with significant generation will raise cost shifting concerns compared to loads pursuing smaller amounts of netting.” *Id.* at P 186.

²⁶ *Id.*

Commission referenced PJM’s statement that retail BTMG rules were “conceived for, and [have] been implemented for, substantially smaller loads (like a warehouse or solar panels) and not on the scale of large data centers” (although PJM’s example is incomplete and not representative of large traditional BTMG that has existed for decades, as discussed below).²⁷ The Commission also quoted PJM’s statement that “[a]llowing very large loads like data centers to net is problematic because loads in this configuration do not carry reserves.”²⁸ The FERC also raised cost shifting concerns, finding that the existing PJM rules “do not limit the amount of qualifying load that a Network Customer may net by using BTMG and do not provide any protections against this potential transmission and resource adequacy planning problem or against the costs of maintaining sufficient resources to serve these loads being shifted onto other customers.”²⁹ Finally, the Commission expressed concern that “existing BTMG rules may lead to both reliability and resource adequacy risks because PJM, per its Tariff, is obligated to serve transmission customers using BTMG but does not consider such customers in transmission and resource adequacy planning.”³⁰

²⁷ *Id.* The Industrials/Amtrak note that PJM’s example of warehouses with solar panels fails to capture BTMG’s use by a wide array of industrial, institutional, and commercial customers over many years. Even when PJM’s BTMG rules were approved in 2004, behind-the-meter units were operating and involved in the FERC proceeding approving BTMG rules. For example, a refining company intervenor described its on-site generation as a “60 megawatt combined cycle cogeneration facility.” Motion to Intervene of Valero Refining Company – New Jersey, Docket No. ER04-608-000 (Mar. 23, 2004). AF&PA, one of the joint protestors in the instant proceeding, also indicated at the time that its members owned cogeneration and small power production facilities QFs, including approximately 100 small hydroelectric plants. Motion for Leave to Intervene Out of Time of the American Forest & Paper Association, Docket No. ER04-608-000 (Apr. 2, 2004). An agricultural company informed FERC that its Decatur, Illinois site includes “substantial facilities for the processing of corn, soybeans, and bio-products, as well as a research center.” The company reported that these facilities “have a combined load, net of the capabilities of [the company’s] onsite cogeneration, of between 200 and 300 MW.” Motion to Intervene of Archer-Daniels-Midland Company (“ADM”), Docket No. ER04-608-000 (Mar. 22, 2024). ADM did not specify the size of its on-site generation, but considering the size of the net load and the fact that the facilities were cogeneration, the on-site generation was presumably substantial in size.

²⁸ Order at P 186.

²⁹ *Id.*

³⁰ *Id.*

Further, the Commission acknowledged that “not all loads using BTMG are large loads that create the reliability and resource adequacy risks described above.”³¹ The FERC directed 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.”³² The Commission directed that the threshold “should reduce the reliability and resource adequacy risks discussed above 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.”³³

The principles outlined in the Commission’s statements above provide guidance on the path forward. The Retail Threshold should be set in such a way that: (1) identifies and addresses the changed circumstances referenced by the FERC; (2) strikes the balance between super-sized data center computational loads (new to the grid) and traditional BTMG loads, some of which are large in their own right; (3) pays attention to the unique and varied load/generation configurations that exist; (4) avoids cost-shifting; (5) reduces reliability and resource adequacy risks; and (6) allows Network Customers to reduce transmission charges “in a transparent, not unduly discriminatory fashion.”³⁴

As to the changed circumstances referenced by the FERC, the record and industry experience demonstrate that today’s system challenges are not driven by existing manufacturers and institutional customers with retail BTMG. From the beginning, large manufacturers have operated behind-the-meter generating facilities that offset their load. At the establishment of BTMG rules in PJM over 20 years ago, large on-site generation units already existed and

³¹ *Id.* at P 221.

³² *Id.*

³³ *Id.*

³⁴ *See id.*

participated in the proceeding approving BTMG Rules. For example, a refining company intervenor at the time described its on-site generation as a “60 megawatt combined cycle cogeneration facility,” and an agricultural company described its operational location as having “a combined load, net of the capabilities of [the company’s] onsite cogeneration, of between 200 and 300 MW,” implying a substantial presence of on-site generation.³⁵

In other words, the “changed circumstances today” cited by the Order are not the result of “traditional” types of BTMG load—load that has existed for decades without creating the reliability concerns cited in the Order. This stands in contrast to the data center loads seeking to interconnect today. These new loads do not have substantial cogeneration,³⁶ do not generally operate large motors (which help with stability on the grid),³⁷ can turn off and on nearly instantaneously, and can reach extremely large sizes, well beyond the traditional “large” BTMG, and well beyond the 200 MW Retail Threshold being proposed in this Protest.³⁸ The planning of new AI data centers, with speed-to-power demands, is also distinct from more long-term, drawn-out planning by manufacturers examining facility additions.

To that point, the Order did not find that BTMG rules were unjust and unreasonable as used by manufacturers with cogeneration, other QFs (which are size limited under PURPA), or even traditional “large” loads with BTMG, as discussed above. This “traditional” BTMG

³⁵ Motion to Intervene of Valero Refining Company – New Jersey, Docket No. ER04-608-000 (Mar. 23, 2004).

³⁶ See Dauphinais Affidavit at P 50 (“[V]ery large computational load processes are generally not highly thermally integrated, if integrated at all, with any co-located generation facilities whose meter they may be located behind. This is because those generation facilities will either not be Cogeneration Facilities or would only be Cogeneration Facilities of greatly limited electrical capability relative to the total magnitude of the electrical load of their host retail customer.”) See also *id.* at PP 22-24.

³⁷ See Assessment of Gaps in Existing Practices, Requirements, and Reliability Standards for Emerging Large Loads: NERC Large Loads Working Group White Paper (March 2026), at p. 29, available at <https://www.nerc.com/globalassets/our-work/guidelines/reliability/white-paper---assessment-of-gaps.pdf>.

³⁸ See Dauphinais Affidavit at PP 65-69 (providing evidence that most load added by large load additions is by additions of 300 MW and higher).

comprises factories, hospitals, universities, transportation networks, and more. Yet, these are customers for whom BTMG has been implemented for over twenty years. Absent appropriate exemptions and an appropriate Retail Threshold, these types of customers will bear the brunt of changes to BTMG-related netting rules.

For some industrial and institutional customers, transmission and capacity cost savings are a critical factor that makes it worth the investment to build and operate generation on their premises—investments these customers have already made (sometimes over decades).³⁹ Absent a reasonable alternative, applying a “gross load” measurement to retail BTMG for Network Integration Transmission Service (“NITS”) and capacity (subject to requests for clarification) could seriously damage existing users’ economic viability by requiring customers to be charged for transmission and capacity as if their behind-the-meter generation were not operating. Addressing cogeneration units in particular, Mr. Dauphinais explained that if the ability to operate “in a safe and environmentally compliant manner within the bounds of what can be supported by the remaining thermal capability of the Cogeneration Facility at just and reasonable electric power rates” cannot be assured, “cogeneration may fail to be a practical and/or economic solution to the retail customer’s needs, causing the efficiency benefits of cogeneration to be forgone and/or the retail customer to become economically unviable.”⁴⁰ Even if the customer were to monetize the energy output of its on-site generation, substantial risks exist that the value that could be earned in the PJM market would be substantially less, with much more attendant risk, than the value of netting and may require the customer to undertake transmission upgrades such that its generation is deliverable to all of PJM, not just the proximate load. In contrast, BTMG with netting (up to a

³⁹ See Dauphinais Affidavit at P 17.

⁴⁰ *Id.*

reasonable degree) not only (1) makes it more likely that hospitals, manufacturers, factories, universities, and transportation networks' on-site generation is economically viable to operate, spurring investment;⁴¹ but (2) it is designed in such a way that on-site generation is incentivized to align with resource adequacy goals by operating efficiently and at times of system stress.⁴²

Consequently, the FERC's path forward to implement the Order should consider the performance of these units and the substantial resource adequacy contributions of BTMG, including in developing a reasonable Retail Threshold. There is simply no need for the "one-two punch" of making industrial and institutional BTMG uneconomic and removing an incentive to operate them efficiently. Instead, the FERC has the opportunity to implement its Order in a way that: (1) limits collateral damage to resource adequacy; (2) avoids making development by retail customers of small power production complicated or prohibitive; (3) recognizes the unique configurations, incentives, and contributions of industrial and institutional retail customers, which do not neatly fit into a wholesale PJM context; and (4) avoids unnecessarily counteracting the goals for onshoring and economic development expressed by the Administration and PJM Governors.⁴³ By setting appropriate applicability standards for BTMG, the FERC will empower the industrial and institutional sectors to continue to make investments in support of resource adequacy, a critical need in the coming years across PJM.

⁴¹ See *id.* at PP 17, 43.

⁴² See *id.* at P 36.

⁴³ See, e.g., The White House, *Made in America Agenda Delivers Manufacturing Boom* (Aug. 13, 2025), available at <https://www.whitehouse.gov/articles/2025/08/made-in-america-agenda-delivers-manufacturing-boom/>.

A. PJM’s proposed exemption for PURPA Qualifying Facilities is appropriate, but it should not be linked to QF status as of the date of the Order. (*Protest Issue #1*)

Congress’s mandate under PURPA is to encourage cogeneration, small power production, and geothermal energy production.⁴⁴ PURPA has played an important role for manufacturers and the electric grid for nearly five decades. It has provided market access where none previously existed, taken strain off the grid, and supported American industry by enabling economic means to reduce energy costs, even in vertically integrated territories.

PJM has proposed a PURPA-related grandfathering provision that would allow facilities that were QFs as of December 18, 2025, to continue to net. As explained below, exempting PURPA QFs is appropriate and aligns with the goals of the FERC’s Order.⁴⁵ In fact, due to the PURPA requirements regarding back-up generation, the benefits of QFs to the grid, and the operating profile of QFs, the BTMG rules should be applied to all QFs, not only those that were certified as of the date of the issuance of the Commission’s Order.

By way of background, QFs fall into two broad categories: “qualifying small power production facilities,” which can be sized up to 80 MW, and “qualifying cogeneration facilities,” which have no size limit.⁴⁶ However, cogeneration QFs must achieve certain efficiency standards and are highly efficient in their use of input fuels.⁴⁷ Cogeneration QFs, which produce both electricity and heat from the same fuel source, make use of the “waste heat” in their manufacturing, heating, or cooling process. As explained by Mr. Dauphinais, “Cogeneration Facilities can achieve

⁴⁴ 16 U.S. Code § 824a-3(a).

⁴⁵ Importantly, the Order did not address PURPA or otherwise modify or address the Commission’s PURPA regulations. Therefore, exempting PURPA QFs is consistent with the Order. *See* Dauphinais Affidavit at P 49.

⁴⁶ 16 U.S. Code § 824a-3.

⁴⁷ Dauphinais Affidavit at P 11.

efficiencies in excess of 80%, by using waste heat and avoiding electrical losses, compared to the efficiency of approximately 50% for conventional electricity generation with a steam boiler.”⁴⁸

In its Compliance Filing, PJM explained its reasoning for applying a grandfathering exemption to allow existing QFs to operate under BTMG rules:

PJM understands that there exists today Retail BTMG that were QFs as of December 18, 2025, with many being cogeneration QFs that are often used in manufacturing and other processes to produce both electricity and useful thermal energy that often lead to economic and energy efficiency benefits. Under Commission regulations, QFs have built-in size limits or, for cogeneration, meet strict efficiency requirements. Specifically, for a cogeneration QF, the generating facility and its load are closely integrated. For example, some retail customers’ loads may be configured such that the load reduces if on-site generation is unavailable because manufacturing processes reliant on thermal heat will discontinue.⁴⁹

PJM’s rationale for the inclusion of QFs in BTMG touches on several of the Order’s key findings and observations. For example, the Order’s finding that “circumstances have changed,” resulting in BTMG rules no longer being just and reasonable, does not apply particularly to QFs, who have been operating similarly for decades.⁵⁰ PJM specifically notes that “existing retail BTMG arrangements with such contractual agreements and that otherwise have QF status have been in place and netted against Network Loads within PJM without operational issues to date.”⁵¹

The grid’s resource adequacy and reliability challenges are not traceable to QFs; in contrast, QFs make a substantial contribution to both. As to the size and configuration of the facilities, as PJM notes, the cogeneration QFs must meet strict efficiency requirements, and other QFs are size-limited (to 80 MW). Some are limited in their use of the transmission system due to the deep

⁴⁸ *Id.*

⁴⁹ Compliance Filing at 9-10.

⁵⁰ *See, e.g., supra* n. 25, demonstrating that large on-site generation existed from the beginning of the implementation of retail BTMG rules in PJM over 20 years ago.

⁵¹ Compliance Filing at 10.

integration between load and on-site generation. Mr. Dauphinais explains in the Affidavit that when an outage of a cogeneration facility occurs, “significant electric load of the host retail customer can be lost immediately following, or very shortly following, the outage.”⁵² This can be due either to certain industrial or commercial processes “not being able to operate without thermal energy from the Cogeneration Facility if it is a Topping-Cycle facility” or due to “a thermal process being unable to operate because of the inability to dump its waste heat to the Cogeneration Facility if it is a Bottoming-Cycle facility.” Put simply, the very configuration of many industrial cogeneration facilities directly limit use of the transmission system. All of these reasons demonstrate low cost-shifting or reliability risks, and warrant remaining within the longstanding BTMG netting rules.

In addition, BTMG netting directly meets the legal requirements of PURPA—namely, enabling QFs to access the back-up power to which they are entitled by law.⁵³ Upon request, QFs are entitled to access to supplementary power, back-up power, maintenance power, and interruptible power, pursuant to long-established enacting regulations.⁵⁴ Rates for back-up or maintenance power “[s]hall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility’s system will occur simultaneously, or during the system peak, or both.”⁵⁵ As explained in detail in the Dauphinais Affidavit, the netting construct permits QFs to receive the back-up power they are guaranteed—back-up power that is charged without assuming they will be needed during

⁵² See Dauphinais Affidavit at P 16.

⁵³ See *id.* at PP 17-21.

⁵⁴ 18 C.F.R. § 292.305(b).

⁵⁵ 18 C.F.R. § 292.305(c)(1).

peak times.⁵⁶ The current BTMG construct (with netting) meets this need perfectly; if such services are needed during peak times, the current design ensures customers pay for them by appropriately measuring peak usage.⁵⁷

In contrast, transitioning to a gross-only approach would subvert this alignment with PURPA's Regulations. Assuming a QF had access to the Firm Contract Demand service (which is not clear from the Order), that service would be calculated based on the maximum the load might draw from the grid, which is not a service that makes sense for extremely rare needs to use the grid.⁵⁸ Similarly, Non-Firm Contract Demand service is not designed for back-up service, as it must be scheduled in advance.⁵⁹ Without clarity on how QFs will obtain back-up and maintenance power across all contexts, QFs should be permitted to continue under the current netting regime.

A further reason to continue netting for QFs is that cogeneration QFs are deeply integrated with the operations of the adjacent plant or facility.⁶⁰ Strong operational and financial incentives exist for cogeneration facilities to operate reliably and efficiently, even above the ordinary cost-savings incentives of all generators. Further, to maintain QF status, the Regulations require certain QFs to meet specified efficiency standards.⁶¹

⁵⁶ See Dauphinais Affidavit at P 29 (explaining that the netting approach “is consistent with FERC’s rule for backup and maintenance power for Qualifying Facilities as it does not assume that a retail customer’s behind the meter Qualifying Facility will be experiencing an outage at the time of the annual transmission system peak and instead relies on factual data, in the form of the behind the meter Qualifying Facility’s historical performance during the time of the annual peak of the transmission pricing zone, when allocating transmission costs to the retail customer.”). See also *id.* at P 49.

⁵⁷ *Id.* at 29.

⁵⁸ See *id.* at PP 44-45.

⁵⁹ While the back-up power is often in retail tariffs, transmission services are part of the costs to the retail supplier that must be passed along to the retail customer. Broadly speaking, retail customers’ transmission charges flow through the supplier or local utility and are not directly charged by PJM.

⁶⁰ See Dauphinais Affidavit at P 16.

⁶¹ See 16 U.S. Code § 824a-3(n); 18 C.F.R. § 292.205.

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. This, by nature, limits grid impacts, in contrast with data centers, which may experience rapid, sudden load shifts. For cogeneration QFs, neither a gross load approach nor a Firm Contract Demand service, nor a non-Firm Contract Demand service (as designed) aligns with the costs or risk profile of cogeneration QFs. Without access to netting or a comparable alternative, QF 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,⁶² contrary to long-standing Commission precedent.⁶³ Consequently, without netting or a reasonable alternative, cogeneration QFs that are operating excellently with a high capacity factor will suddenly be paying for transmission service that they do not use.⁶⁴ Additionally, many QFs size their cogeneration units based on the thermal or steam needs at their facility (such as to provide heating, operate chillers, or make productive use of steam). As stated

⁶² Under the cost causation principle, “costs are to be allocated to those who cause the costs to be incurred and reap the resulting benefits.” *Nat’l Ass’n of Reg. Util. Comm’rs v. FERC*, 475 F.3d 1277, 1285 (D.C. Cir. 2007). *See also Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, 1255 (D.C. Cir. 2018) (adding that the “cost-causation principle” has been recognized “for decades” by “the Commission and the courts”); *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *City of Lincoln v. FERC*, 89 F. 4th 926, 930 (D.C. Cir. 2024); *see BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 268 (D.C. Cir. 2014) (ensuring that “the burden is matched with benefit”); *see also Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (“we evaluate compliance with this unremarkable [cost causation] principle by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.”).

⁶³ *See, e.g., Occidental Chem. Corp. v. PJM Interconnection*, 102 FERC ¶ 61,275, 61,852. The Industrials note that, as the North American Electric Reliability Council (“NERC”) works to develop reliability standards for large loads, it has thus far avoided setting a bright-line MW-based threshold, as other factors besides load size affect reliability considerations. The NERC Large Load Task Force has focused its recent reliability impact review on computational loads, recently observing that “[t]he penetration of large loads on the [Bulk Power System] is growing, especially computational loads.” Assessment of Gaps in Existing Practices, Requirements, and Reliability Standards for Emerging Large Loads: NERC Large Loads Working Group White Paper (March 2026), at p. 46, *available at* <https://www.nerc.com/globalassets/our-work/guidelines/reliability/white-paper---assessment-of-gaps.pdf>.

⁶⁴ The Firm Contract Demand and Non-Firm Contract Demand combination of new transmission service options outlined in the Order might work for planned generation outages, but they do not appear to account for forced generation outages. *See* Dauphinais Affidavit at PP 42-45.

by Mr. Dauphinais, “[T]he thermal energy needs of the retail customer typically dictate how much electric power must be produced by the Cogeneration Facility. For example, if an industrial retail customer has a very high steam need for its processes relative to its electrical needs, the Cogeneration Facility serving that customer will likely have to produce electric power well in excess of that retail customer’s needs for its electrical load.”⁶⁵ This approach may result in excess energy being produced. PURPA generally requires local utilities to purchase this excess energy (“must-purchase obligation”). However, the law permits the Commission to deem certain QFs as having sufficient market access that the applicable utility is excused from its must-purchase obligation.⁶⁶

After many utilities terminated their mandatory purchase obligations in the wake of the development of organized wholesale markets, retail customers with QFs that had excess power were required to secure Interconnection Service Agreements (“ISA”) with PJM and the applicable transmission owner and market-based rate authority to enable sales of excess energy to the PJM market. This history should not limit the ability of retail customers with cogeneration facilities to avail themselves of retail BTMG netting for energy production behind the retail meter. Cogeneration facilities that are (or could be) QFs are well-positioned to benefit the grid and their manufacturing operations in an efficient, cost-effective manner.

In the wake of the termination of the mandatory purchase obligation, many QF-eligible customers did not seek or maintain QF status due to a combination of (1) having access to cost-based back-up power via BTMG netting rules,⁶⁷ and (2) their utilities’ must-purchase obligations

⁶⁵ Dauphinais Affidavit at P 15.

⁶⁶ 16 U.S. Code § 824a-3(m).

⁶⁷ Dauphinais Affidavit at P 48 (“PJM’s proposal fails to recognize there may be some Cogeneration Facilities within the PJM footprint that fully meet FERC’s requirements to be a Qualifying Cogeneration Facility (and, thus, a

being terminated. However, these units operate on the same principles and could seek QF status – or re-certify their QF status – to ensure they retain access to back-up power, as set forth in PURPA’s implementing regulations under the current “changed circumstances.” Without a reasonable back-up transmission option, limiting BTMG eligibility to units with QF status as of December 18, 2025, would put PURPA’s requirements and the FERC’s direction in this proceeding in conflict.⁶⁸

Finally, the same factors listed above will also apply to future QFs, particularly cogeneration facilities. Because PURPA’s policy objectives as implemented by the FERC remain intact, and because QFs are outside the key concerns set forth in the Order, the date limitation in PJM’s proposed definition of Retail Behind-the-Meter Generation should be removed. Encouraging more QFs aligns with the goals established by federal statute, which remain as relevant today as they were in the 1970s. QFs should be moved from grandfathered status to full inclusion as BTMG.

B. PJM’s Proposed 50 MW Retail Threshold is insufficient to balance the FERC’s stated resource adequacy concerns with the harm to existing manufacturers, retail customers, and their contributions to resource adequacy. PJM’s alternative Retail Threshold of 200 MW more appropriately balances these concerns, while simplifying compliance and supporting economic development. (*Protest Issue #2*)

In its Order, the FERC directed PJM to propose a Retail Threshold, below which retail BTMG netting rules will continue in effect. The Order did not specify at what level the Retail Threshold should be set. In its Compliance Filing, PJM proposes a Retail Threshold of 50 MW “to

Qualifying Facility), except they do not currently have a FERC-approved certification or self-certification of their Qualifying Cogeneration Facility status because they do not [make] sales of excess power either at avoided cost to electric utilities or into the wholesale power market. In addition, these Cogeneration Facilities have historically not needed certification or self-certification as a Qualifying Cogeneration Facility in order for the electrical load of their host retail customer to have reliable access to backup and maintenance power through just and reasonable rates through PJM’s current retail behind the meter generation netting provisions for NITS charges and capacity requirements.”)

⁶⁸ Dauphinais Affidavit at P 49.

avoid unneeded regulatory uncertainty for retail customers whose grid impacts on reliability are more limited and have been in existence without noted impact for decades.”⁶⁹ PJM also offers an alternative concept of a higher threshold, specifically naming the minimum 200 MW threshold of PJMICC, as an interim solution in the event the Commission does not accept PJM’s proposed legacy treatment for existing on-site generation greater than 50 MW.⁷⁰

PJM makes important points in its Compliance Filing about the damaging impact a low Retail Threshold would have on some retail customers and their on-site generation, noting that without sufficient grandfathering exemptions, a too-low Retail Threshold could cause existing Retail BTMG resources to “cease operations and in turn exacerbate in an unintended fashion the resource adequacy issues in the PJM Region.”⁷¹ Unfortunately, this concern is not limited to generation sized at 50 MW and less. While many retail customer facilities are, in fact, smaller than 50 MW, heavy industry and manufacturing facilities as well as transportation providers often have more than 50 MW of generation operating behind their retail meters, including facilities producing aluminum, paper, steel, chemicals, oil refineries, and more. While PJM recognizes the concern about affecting existing resources above 50 MW, the Industrials/Amtrak believe it is critical that the Commission choose a Retail Threshold that preserves the reliability contributions of these kinds of facilities—both existing *and* planned. While no bright-line MW threshold will perfectly delineate grid impacts, the fact is that a significant number of dependable, on-site generation units

⁶⁹ Compliance Filing at 12. PJM proposed a generation-based threshold, as opposed to a load-based threshold. This discussed in more detail in Section IV.C., *infra*.

⁷⁰ PJM states that if the Commission adopts a “higher interim materiality threshold of this sort at the start of the transition period, PJM commits to reviewing additional data from Transmission Owners on the extent and size of existing Retail BTMG. This data could inform whether the interim materiality threshold should be further refined in the future through a separate filing on compliance in this docket or, if necessary, pursuant to section 205 of the Federal Power Act.” Compliance Filing at 15.

⁷¹ Compliance Filing at 14.

with negligible reliability risks to the grid exist in this range up to 200 MW and even up to 300 MW.⁷² If the Commission sets the Retail Threshold too low, it will risk creating additional cost-causation concerns for industrial, institutional, and transportation facilities with high capacity factors and minimal downtime.

Consequently, PJM's alternative Retail Threshold of at least 200 MW is superior to the main proposal of 50 MW for several reasons, summarized as follows:

1. A 200 MW Retail Threshold **maintains incentives that bolster resource adequacy and grid efficiency**, thereby avoiding inefficient transmission investment.
2. A 200 MW Retail Threshold **preserves the focus on reliability challenges** caused by super-sized load, while **avoiding economically devastating outcomes** for manufacturing, institutional and transportation facilities.
3. A 200 MW Retail Threshold **avoids major administrative disincentives** to operate on-site generation by avoiding the need to force existing retail customers into new and unfamiliar regulation, requiring them to become FERC-regulated public utilities, secure PJM membership, and undertake related credit and risk requirements.
4. A 200 MW Retail Threshold aligns with **regulatory logic that identifies various "tiers" of large load**.
5. A 200 MW Retail Threshold **avoids burdening PJM with a significant number of studies for existing generators** (for generator deactivations or for BTMG that becomes Co-Located Generation).
6. A 200 MW Retail Threshold **de-emphasizes grandfathering and emphasizes stable rules for customers**, a more durable approach.
7. A 200 MW Retail Threshold **respects the importance of onshoring manufacturing**, consistent with federal and state economic development goals.

Below, the Industrials/Amtrak elaborate on and support each of the above points.

#1. Resource adequacy and grid efficiency. The Commission did not provide an exhaustive list of all reasons for seeking input on a Retail Threshold. However, the

⁷² See Dauphinais Affidavit at 67 (referencing data and regulatory developments in Michigan demonstrating that a 300 MW threshold is supportable considering data center MW load requests).

Industrials/Amtrak respectfully suggest that one of the primary considerations should be the resource adequacy contributions of retail BTMG. On-site generation—particularly larger units—provides substantial benefits to the grid. Rapid retirement of these resources would create a near-term surge in forecast load and, thus, transmission planning needs, resulting in extremely high transmission rates being pushed, artificially, even higher. As noted by PJM in its Compliance Filing, removing netting from existing retail BTMG could result in many older retail BTMG units deciding to “forego the option of interconnecting into the PJM system altogether,” resulting in “higher Network Loads requiring grid service, as loads that are currently netted by the retail BTMG would not be matched with additional supply of Capacity Resources.”⁷³ One reason that a customer may elect not to continue operating its retail BTMG is that, in order to become a PJM Capacity Resource, the behind-the-meter generation would need to become deliverable to all PJM load, which could result in costly transmission upgrades, which may render the generation unit uneconomic. From a resource adequacy perspective, this is an undesirable outcome, as these behind-the-meter resource and reliability benefits are needed as the industry faces an unprecedented reliability challenge.⁷⁴

Part of the benefits to the grid derive from the fact that these large generating units are incentivized by the netting structure to operate their on-site generation during times of grid stress because it is those very times when the billing determinants for capacity or back-up service are established for retail customers, including those with BTMG.⁷⁵ Maintenance and other outages are

⁷³ Compliance Filing at 13.

⁷⁴ The PURPA construct indirectly demonstrates the value of proliferation of “small” (in PURPA’s case, up to 80 MW), on-site generation as an important piece of the resource adequacy puzzle. PURPA was developed during the energy crises of the 1970s, and while FERC is not bound to 80 MW as a Retail Threshold (indeed, the Industrials/Amtrak believe it should be higher with grid expansion and growth), PURPA’s design and logic emphasize the value of policies that facilitate generation projects, including on-site generation supporting a retail customer’s load.

⁷⁵ Dauphinais Affidavit at P 36.

planned or minimized in accordance with these incentives. As explained by Mr. Dauphinais, the netting construct “sends a strong cost signal for retail behind the meter generation to operate and fully serve the electric load of their host retail customer during times of grid stress.”⁷⁶ The Commission should avoid a compounded danger that would occur from setting the Retail Threshold too low, where (1) some BTMG (existing or planned) becomes uneconomic, reducing the amount of generation on the grid; and (2) the remaining BTMG is not incentivized to operate during times of system stress. Such a “one-two punch” could be substantially avoided by a Retail Threshold that aligns with how most existing on-site generation located with retail customers is designed and operates.

#2. Avoiding economic damage to retail customers. The Commission’s Order addresses changing circumstances transforming the grid. These changes, however, are not largely driven by 50, 100, or even 200 MW facilities. 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.⁷⁷ These new entrants frequently have massive capital behind them, enabling them to develop massive centers of load more quickly than any manufacturer or industrial seeking to expand operations.

In contrast to a super-sized load currently planning its entrance onto the grid, the removal of netting rules will fall most heavily on existing customers and the industry that is “stuck” with the economics of their sector. For many of these customers, particularly heavy industry, energy is one of the top costs of doing business. The on-site generation facilities these customers have

⁷⁶ *Id.*

⁷⁷ See 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) at 2-3 (“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.”).

developed were built based on certain assumptions and have been operated under those assumptions. For some customers, changes to a gross-load approach for transmission and/or capacity will render those units uneconomic, forcing them to operate at a loss, close and seek power from the grid, or shutter the plant entirely.

These customers and the industries that make up the “middle range” of up to around 200 MW or 300 MW—who have been relying on netting rules for decades—should not be lumped in with super-sized forces that are transforming the grid and its attendant costs. In the recent *Statement of Principles Regarding PJM* (“Statement of Principles”), the White House’s National Energy Dominance Council and the PJM governors explain that the “size and the risks [of data centers] pose to resource adequacy make today’s data centers unique.”⁷⁸ The Statement of Principles expresses a commitment to ensure that data centers bear the costs of new capacity, where they have not secured their own capacity or agreed to be curtailed. In a similar fashion, this “middle range” of industrial, institutional, and transportation customers, up to around 200 MW or 300 MW, should not bear the costs driven by rapid, super-sized data center growth.

#3. Avoiding regulatory burdens. To the extent practicable, the Commission should avoid requiring retail customers to enter and comply with a complex federal regulatory regime. Large manufacturers and institutional customers are focused on their core business. Forcing such retail customers into new and unfamiliar regulation, PJM membership, and other federal requirements creates a substantial burden. As PJM indicated in its Compliance Filing, this added burden may compound resource adequacy concerns. PJM stated in its Compliance filing, “Further, concerns were raised that a lower threshold could force many existing Retail BTMG resources offline during

⁷⁸ Department of Energy, *Statement of Principles Regarding PJM*, available at <https://www.energy.gov/documents/statement-principles-regarding-pjm>.

the transition period because such resources do not intend to enter into PJM's interconnection queue to become a market resource."⁷⁹

While the Order is primarily aimed at new arrangements involving wholesale generators, the BTMG changes are directly impactful for retail customers who have built, supported, and strengthened the PJM grid for decades. A low Retail Threshold will have a chilling effect on manufacturers' interest in on-site generation solutions that could otherwise mitigate existing resource adequacy challenges. A low Retail Threshold will render some manufacturers with on-site generation uneconomic, including, but not limited to, the case where the retail BTMG customer may be forced to incur inefficient costs so that its generation can be generally deliverable for all PJM load, even if the generation was built to serve the proximate load. These potential costs and risks of transforming retail BTMG into a PJM Capacity Resource could reasonably be expected to remove generation resources from the system at a time of high resource adequacy risks.

Further, the BTMG netting structure recognizes and works with diverse operational configurations of retail customers. Retail BTMG configurations are varied and often complex. Netting up to a reasonable threshold allows industrial and institutional configurations to be developed, maintained, and expanded without triggering complicated wholesale market rules, metering configurations, PJM studies, PJM filings, and more. For retail customers, being able to plan and develop under stable, existing rules has immeasurable value.

⁷⁹ Compliance Filing at 12.

Finally, while not directly controlling on the “gross/net” issue, PURPA, as a long-established resource adequacy statute, offers a regulatory logic that supports this notion.⁸⁰ Specifically, PURPA demonstrates the importance of power production that is integrated with industrial and institutional operations, primarily through PURPA’s recognition of qualifying cogeneration facilities. The facilities, which are frequently situated on-site with industrial facilities, make use of both power produced and steam or heat simultaneously to power heating, chillers, or other industrial processes. As demonstrated by PURPA, there are sound policy and legislative reasons to not treat those integrated facilities as public utilities or to burden them with the regulatory demands required of wholesale generators in PJM. The FERC should do the same here by setting a sufficiently high threshold to avoid “death by 1000 cuts” to the industrial and institutional customers who are *retail* customers and are accustomed to operating as such. PJM has offered to review data on the extent and size of existing retail BTMG.⁸¹ This proposal could mitigate the FERC’s concern about PJM not planning for the full extent of behind-the-meter load, as it relates to BTMG under a reasonable Retail Threshold.

#4. Regulatory Logic of 200 MW. In seeking input on the Retail Threshold question, the Commission noted possible points of reference. In particular, the Commission mentioned that “the

⁸⁰ While “ancient wisdom” may be a bridge too far in describing an Act of Congress from nearly 50 years ago, PURPA provides a timely, enduring, and relevant perspective on today’s issues. Passed in the 1970s during the energy crisis of that era, PURPA offers value in this proceeding as a regulatory roadmap that may inform FERC’s consideration of an appropriate Retail Threshold. In addition to the value of proliferation of on-site generation as an important piece of the resource adequacy puzzle, PURPA also emphasizes the importance of power production that is integrated with industrial and institutional operations and the essential nature of cost-driven back-up and maintenance power options. These points do not provide precise answers to the questions FERC asked PJM to weigh in on, but they do provide valuable regulatory context for addressing them.

⁸¹ Compliance Filing at 15 (“Should the Commission adopt a higher interim materiality threshold of this sort at the start of the transition period, PJM commits to reviewing additional data from Transmission Owners on the extent and size of existing Retail BTMG. This data could inform whether the interim materiality threshold should be further refined in the future through a separate filing on compliance in this docket or, if necessary, pursuant to section 205 of the Federal Power Act.”).

Commission’s definition of a small generator is 20 MW.”⁸² While many reference points could be proposed, the Industrials/Amtrak agree with PJM that 10 MW or 20 MW are far too low for this purpose. Instead, the Industrials/Amtrak have selected 200 MW as a proposed minimum Retail Threshold based on industry data, including the size of new large load and the typical size of long-established generation that would otherwise have to rely on grandfathering.⁸³ Yet, there is regulatory logic that supports a 200 MW Retail Threshold, as well.

Across the country, in state proceedings and other proceedings at the FERC, debates are raging about how exactly “large load” should be defined. While “large load” may mean different things in different contexts, the Industrials/Amtrak respectfully suggest that the Commission should consider a size framework that recognizes that “large load” and “large generation” come in different iterations. While various cutoffs have been proposed, one federal reference point for “small” generation is PURPA’s cutoff for non-cogeneration QFs at 80 MW. These types of QFs are termed “qualifying small power production facilities,” suggesting that medium or larger generation categories would be above 80 MW. To that end, the Industrials note that many of their members, who are large manufacturers, come in this “middle” zone between “small” (under 80 MW) and “super-sized” (above 200 or 300 MW).

More recently, Order 2023 and Order 2023-A also provide logical groupings for generation sizing purposes. There, the Commission set forth tiers of study deposits, with the lowest tier being

⁸² Order at P 221 (citing Order No. 2006, 111 FERC ¶ 61,220 at P 1).

⁸³ See Dauphinais Affidavit at PP 65-69. See also 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) at 2-3.

generation under 80 MW (reflecting the PURPA “small” generation cutoff), the middle tier being 80 MW to under 200 MW, and the upper tier being 200 MW or above.⁸⁴

While the Commission is not bound to any of these reference points, the Industrials/Amtrak believe that the Commission faces a critically important decision on the “middle tier” up to 200 MW. In that band sits some of America’s biggest manufacturing facilities, including steel, consumer good producers, chemicals, pharmaceuticals, oil refineries, transportation providers, and others, who have demonstrated for decades their reliable contributions to the grid. Many of these facilities are cogeneration facilities and QFs, demonstrating efficiency and integrated load and generation, especially when there are thermal processes involved. The Industrials/Amtrak respectfully request that the Commission set a Retail Threshold that allows for netting up to the top of this “middle tier” at 200 MW. How the FERC resolves this may determine the future of hundreds of megawatts of existing and planned on-site generation that would support resource adequacy efforts in the region.

#5. *PJM staffing.* A 200 MW Retail Threshold avoids burdening PJM with a significant number of studies for existing generators (or for generator deactivations). Without a reasonably high Retail Threshold, PJM staff will likely have to process a considerable number of deactivation requests, interconnection studies, and other activities, all at a time when PJM is facing tremendous challenges with resource adequacy and reliability.

#6. *De-emphasizing grandfathering.* By setting a higher threshold, the FERC would relieve customers, PJM, and the FERC from most grandfathering questions and uncertainty. While grandfathering rules should be clear and confirmable, as discussed below, the higher the FERC

⁸⁴ See Order on Rehearing and Clarification, *Improvements to Generator Interconnection Procedures and Agreement*, 186 FERC ¶ 61,199 at PP 187-188 (Mar. 21, 2024).

sets the Retail Threshold, the more retail customers will have a solid, ongoing basis for making future investments and expanding. This issue is addressed further in Section V.A, *infra*.

#7. Federal and state economic development goals. The Administration and various PJM governors' offices are pursuing economic development agendas that emphasize the importance of making things in the United States.⁸⁵ Most of the Industrials' members do just that, producing goods that are sold domestically and worldwide. They and similarly-situated businesses employ millions of Americans as part of the United States' industrial backbone. In the case of Amtrak, losing the ability to net transmission charges with the contracted behind-the-meter generation will significantly increase Amtrak's operating costs and seriously affect the Northeast Corridor. As explained previously, Amtrak relies on retail BTMG, generated at 25 Hz, to provide energy supply and black-start capability to support the south end of Amtrak's Northeast Corridor traction power. Given Amtrak's need for redundancy to support the reliability imperatives of Amtrak's operations, Amtrak's retail BTMG exceeds the 50 MW Retail Threshold proposed by PJM. Increasing the Retail Threshold to 200 MW would safely accommodate Amtrak's contractual arrangement without relying solely on grandfathered arrangements.

These retail customers watch this proceeding with grave concern, seeing a regulatory regime that appears to be focused on the highly-capitalized data center industry, unsure if the FERC and other regulatory bodies will recognize the "middle" area that many industrial and institutional customers and other significant energy users that have invested in retail BTMG occupy.

⁸⁵ See, e.g., The White House, *Made in America Agenda Delivers Manufacturing Boom* (Aug. 13, 2025), available at <https://www.whitehouse.gov/articles/2025/08/made-in-america-agenda-delivers-manufacturing-boom/>.

C. The FERC should direct PJM to remove the “all-or-nothing” approach to the Retail Threshold; netting should be based on the amount of load, not the amount of generation. (*Protest Issue #3*)

The Order directs 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.”⁸⁶ However, instead of proposing a load amount for netting, PJM proposed a *generation* threshold. Further, pursuant to PJM’s “all-or-nothing” design, if generation is sized above the Retail Threshold, the electrical location is entirely disqualified from netting. Both of these design choices are contrary to a plain reading of the Order, create an unfortunate economic “cliff” effect, and mark an unjustified shift from the current definition of BTMG.

PJM’s Compliance Filing contradicts the Order’s plain language in several respects. First, the plain reading of the Order does not suggest a “cliff.” In fact, the Order gives no indication that some electrical locations with BTMG would qualify for this netting and not others. Paragraph 221 of the Order places no limiting language on which Network Customers or electrical locations may “reduce their transmission charges in a transparent, not unduly discriminatory fashion.” If the Commission intended to limit netting to certain electrical locations (*i.e.*, those with an on-site generation nameplate rating less than the Retail Threshold), it presumably would have indicated such. Instead, it appears that the Commission’s intent was for retail netting to continue at all electrical locations *but only up to the Retail Threshold that the Commission ultimately approves*.⁸⁷

Second, PJM’s choice to base the Retail Threshold on a generator’s nameplate contradicts the FERC’s direction to “maintain the current BTMG rules for customers that fall below a new

⁸⁶ Order at P 221 (emphasis added). *See also* Order at P 179 (“we direct PJM to maintain the current BTMG rules for customers that fall below a new MW materiality threshold for the amount of load at a particular electrical location that Network Customers may net using BTMG”).

⁸⁷ For example, if the Retail Threshold is 50 MW and the load is 300 MW at applicable hours, the 300 MW could be reduced to 250 MW as long as at least 50 MW of generation was active during those hours.

MW materiality threshold for the amount of *load* at a particular electrical location that Network Customers may net using BTMG.”⁸⁸ PJM justifies a threshold based on the size of the generator in part because “BTMG is defined as a generation unit, rather than a load.”⁸⁹ However, the issue being addressed by the Commission is “the amount of load ... that Network customers may *net*.”⁹⁰ Further, PJM states that “a threshold based on the size of the generator provides a clear and bright line for what can continue qualifying as retail BTMG.”⁹¹ However, a plain reading of the Order seeks only one “bright line”—the amount of *load* that may be netted at an electrical location. In his affidavit, Mr. Dauphinais provides additional reasons why a generation-based Retail Threshold is inappropriate.⁹²

Third, despite the Commission’s direction to “maintain the current BTMG rules for customers that fall below” the Retail Threshold, PJM’s proposal on this issue works against, rather than maintains, current BTMG rules. As explained by Mr. Dauphinais, “nameplate capacity does not necessarily indicate the actual electrical capability of behind-the-meter generation.”⁹³ Mr. Dauphinais provides the example of generation served from a common steam system, where the generation output is limited by the steam system’s capability—meaning a retail customer could be disqualified by an above-threshold nameplate rating on their generation, even though that generation could never produce that much power. In addition to PJM’s mistaken interpretation of the Order, if the FERC adopts PJM’s interpretation, it will result in a punitive “cliff effect” that would serve as a disincentive to additional investment for retail customers (*e.g.*, manufacturers,

⁸⁸ Order at P 179 (emphasis added).

⁸⁹ Compliance Filing at 14.

⁹⁰ Order at P 179.

⁹¹ Compliance Filing at 14.

⁹² Dauphinais Affidavit at PP 55-60.

⁹³ *Id.* at P 56.

hospitals, and universities) that may want to develop additional generation. Just as taxes increase marginally when a taxpayer advances into a new tax bracket, rather than eliminating the benefits of the lower tax bracket, PJM's rules should not impose a binary regime where a facility 1 MW above the Retail Threshold loses BTMG netting status altogether, while a facility 1 MW below the Retail Threshold preserves it fully. Such cliffs distort investment decisions, encourage inefficient downsizing of generation projects, and produce outcomes disconnected from actual system needs, resulting in harm to resource adequacy, as explained previously, as well as to economic development opportunities in the PJM region, particularly those connected to the lower tiers of large load (that is, under 200 MW).

On a related note, the fact that a retail customer engages in sales of excess energy must not disqualify the customer from netting its retail BTMG. Wholesale sales into the PJM market are, by definition, currently not part of BTMG. The current BTMG definition clearly states that BTMG does not include generation output that uses the Transmission System.⁹⁴ There are a variety of reasons retail customers may make wholesale sales of excess energy. Many QFs were forced to sell excess energy when mandatory must-purchase requirements were terminated.⁹⁵ As a result, these retail customers with on-site generation were essentially forced to sell into the market (make wholesale sales). As explained by Mr. Dauphinais, other cogeneration QFs are sized to the steam or heat needs on-site, which means there may be excess power.⁹⁶ It would be unreasonable to disqualify these units entirely based on a portion of the output going into the wholesale market. They are still retail customers and should operate under a retail construct. These customers' (and other similarly situated customers') output should not be deemed as putting the entire unit into the

⁹⁴ Compliance Filing at 5-6 (citing Tariff, Part I, Definitions A-B ("Behind The Meter Generation")).

⁹⁵ See Dauphinais Affidavit at PP 15, 48.

⁹⁶ See *id.* at P 15.

Co-Located Load category, which triggers a cascade of regulatory burdens and financial challenges. Likewise, netting of load should be available to retail customers up to the Retail Threshold, regardless of the size of the generation or QF certification status. Similarly, excess generation should still be eligible to sell without disrupting the core BTMG status of offsetting generation/up to the selected Retail Threshold.

V. COMMENTS

The Industrials/Amtrak believe that PJM's proposals on back-up generation and grandfathering are reasonable interpretations and implementation of the Order. The Industrials/Amtrak offer brief comments on these proposals.

A. Grandfathering rules and confirmation of grandfathered status should be clear and unambiguous, including existing agreements with renewal terms.
(Comments Issue #1)

In the context of this compliance phase of the proceeding, the Industrials/Amtrak support PJM's current approach of grandfathering existing retail BTMG based on existing agreements with their local utility or other agreements. PJM's approach provides reasonable latitude, recognizing the diverse and complex array of BTMG configurations and structures that exist, as well as the diverse and complex array of contracts and arrangements used to effectuate and continue these operations.

Part of the complexity of retail BTMG is that it has been relied upon by industry and institutions who have explored innovative and varied means of building assets that help power their operations and reduce their costs. Many larger retail BTMG customers have operated existing facilities for years, even decades. These sites often have utility contracts that are not long-term; the sites are mature, so long-term agreements have frequently given way to agreements that renew periodically or year by year. Many do not have long-term fuel or maintenance agreements. Yet,

the existence of those contracts (past or present) has shaped the contours of how these units operate. These customers have relied on the BTMG rules and should be able to continue as long as their current contract is in force, including any renewal terms. Such grandfathering should also accommodate any amendments to such agreements.

For example, one example (changed only slightly for confidentiality) of a manufacturer represented by one of the Industrial organizations shows the following features: several dozen combined heat and power (“CHP”) assets, which are primarily designed to meet the thermal load; thermal energy required for industrial processes; a significant decrease in electricity generation occurs, thermal generation also declines, resulting in a simultaneous load shedding event decreasing the need for any external electricity purchases; there are physical limitations on amounts of power that can be drawn from the grid; due to the sizing of generation to meet thermal needs, excess power is produced under an industrial purchased power contract; standby service contract is in force, with decades of demand history informing the contract; a purchased power contract has been in effect for decades, as well, and is renewed on a year-to-year basis; the CHP assets are fueled by a mixture of coal and natural gas, for which multi-year fuel supply contracts and firm natural gas pipeline capacity reservation contracts are maintained; the facility falls between 80 MW and 200 MW in production capability.

The above example is an organization that has operated in a stable, consistent manner over decades. The on-site generation may not have QF status, and if the FERC chooses a Retail Threshold less than 200 MW, it may not qualify for retail BTMG netting. Consequently, if the organization cannot rely on clear, stable grandfathering rules to know it can continue to operate in a manner that is consistent with how it has operated for decades, the effects will be profound and devastating.

As another example, Amtrak, a retail customer, has a contractual arrangement for retail behind-the-meter generation to support its Northeast Corridor operations. As a legacy of the buildout of the Northeast Corridor, Amtrak requires service at 25 Hz, which it receives, at least for some of its requirements, through a contractual arrangement with a third-party generator that is neither a small power production QF nor a cogeneration QF. This arrangement provides the only black-start capability for Amtrak's south end of its Northeast Corridor traction power system if the 60 Hz power grid goes out of service. This retail behind-the-meter generation exceeds the 50 MW Retail Threshold that PJM has proposed. While Amtrak expects that its existing arrangement would be grandfathered under PJM's compliance filing approach, there is tremendous risk and cost to Amtrak to rely upon such grandfathered status.⁹⁷

Consequently, the Industrials/Amtrak recommend that the grandfathering rules be clear, broadly construed, and confirmable with relative ease for existing BTMG customers. All existing BTMG-related contracts, including those that renew year by year, must be honored to avoid serious, unwarranted harm to these retail customers, such as Amtrak. Amendments to a grandfathered contract should not impair or affect grandfathered status. Grandfathered status of an electrical location should be confirmable through a clear, straightforward process to minimize regulatory hurdles. In this time of rapid policy and price changes, shaken by the emergence of super-sized load driving scarcity and price volatility, all existing retail customers require a stable platform for investment. Regulatory ambiguity creates additional issues and concerns, particularly for retail customers, for whom the FERC-jurisdictional markets are not within their core business.

⁹⁷ Because of the risk associated with relying upon grandfathered status, Amtrak strongly supports the Retail Threshold being set at least at 200 MW, with netting accommodated below the Retail Threshold.

B. PJM’s exemption for back-up generation is appropriate and should be maintained. (Comments Issue #2)

PJM’s proposed BTMG tariff definition includes the following exclusion: “not including back-up generation at the same electrical location as the retail load that can only be used to serve such retail load during conditions that may threaten the integrity or reliability of the PJM Region or the regional power system.” If the Commission agrees with PJM’s proposal that the Retail Threshold be set based on the amount of behind-the-meter generation (not load), this emergency back-up exclusion is appropriate and reasonable for several reasons.

First, if PJM’s proposed “all-or-nothing” approach to the Retail Threshold is maintained, lack of the back-up exclusion would force retail customers to choose between (a) abandoning back-up generation on-site to support their main generation, and (b) going above the Retail Threshold⁹⁸. The first choice puts more reliance on the grid, but the second choice could have profound financial consequences for some customers. Emergency generation is often sized similarly to other on-site generation to be able to function as a full back-up power source; consequently, without the exemption, this would effectively cut the Retail Threshold in half for any customers who want to install emergency generation.

Second, the value of incentivizing back-up generation extends beyond reducing customers’ own use of the grid in case their own primary generation goes down. It also potentially provides additional resource adequacy strength to be prepared for emergencies. For example, DOE, in its recent Order during Winter Storm Fern, stated that it may issue an order directing the operation of private, behind-the-meter generation to get through the storm.⁹⁹ PJM reiterated this point in its

⁹⁸ The Industrials/Amtrak note that removal of the “all-or-nothing” “cliff effect” in PJM’s proposal would lessen or eliminate the concern about emergency back-up generation.

⁹⁹ U.S. Department of Energy, Emergency Order No. 202-26-06 (issued Jan. 26, 2026).

Compliance Filing, noting that “during the recent Winter Storm Fern, [DOE] issued an Order applicable in the PJM Region pursuant to Section 202(c) of the Federal Power Act that directed “PJM, in collaboration with its Transmission Owners . . . to direct backup generation resources . . . to operate as a last resort before declaring an Energy Emergency Alert (EEA) 3 (*i.e.*, before firm load interruption) or during an EEA 3.”¹⁰⁰ PJM argues that such generation may serve as a “reliability tool.” Considering the tariff language limiting the back-up exclusion to generation “that can only be used to serve such retail load during conditions that may threaten the integrity or reliability of the PJM Region or the regional power system,” this is a narrow exception, which the Industrials/Amtrak interpret to be rarely-used generation (such as diesel) that could keep the industrial or institutional load (that does not normally draw from the grid due to the regular on-site generation) from suddenly needing grid power, creating localized reliability concerns; it could also operate during broader grid emergencies.

¹⁰⁰ Compliance Filing at 13.

VI. CONCLUSION & REQUEST FOR RELIEF

The Industrials/Amtrak respectfully request that the Commission reject PJM's Compliance Filing, consistent with this Protest, and direct PJM to file a new compliance filing, consistent with the above Protest and Comments.

Respectfully submitted,

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American Forest and Paper Association, and the
National Railroad Passenger Corporation (Amtrak)

Dated: March 16, 2026

CERTIFICATE OF SERVICE

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

Dated this 16th day of March, 2026.

/s/ Matthew L. Garber
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EXHIBIT NO. IA-1

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

PJM Interconnection, L.L.C.

)

Docket No. ER26-1479-000

AFFIDAVIT OF JAMES R. DAUPHINAIS

**BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.) Docket No. ER26-1479-000

AFFIDAVIT OF JAMES R. DAUPHINAIS

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

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AFFIDAVIT OF JAMES R. DAUPHINAIS

List of Attachments

- 1 Qualifications of James R. Dauphinais
- 2 Analysis of MW Size of Consumers Energy Company Data Center Load Addition Inquiries
- 3 Michigan Public Service Commission Case No. U-21859, Consumers Energy Company Data Request Response U21859-DCC-CE-0045
- 4 Illinois Commerce Commission Docket No. 25-0677, Commonwealth Edison Company Response to Data Request NRG-ComEd 1.02

**UNITED STATES OF AMERICA
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PJM Interconnection, L.L.C.) Docket No. ER26-1479-000

AFFIDAVIT OF JAMES R. DAUPHINAIS

Glossary of Abbreviations and Acronyms

| | |
|--------|---|
| AF&PA | American Forest and Paper Association |
| Amtrak | National Railroad Passenger Corporation |
| BAI | Brubaker & Associates, Inc. |
| BTMG | Behind the Meter Generation |
| CHP | Combined Heat and Power |
| ComEd | Commonwealth Edison Company |
| DCPZ | Zonal Daily Load |
| FERC | Federal Energy Regulatory Commission |
| FPA | Federal Power Act |
| IECA | Industrial Energy Consumers of America |
| ICC | Illinois Commerce Commission |
| MISO | Midcontinent Independent System Operator, Inc. |
| MPSC | Michigan Public Service Commission |
| NERC | North American Electric Reliability Corporation |
| NITS | Network Integration Transmission Service |
| NU | Northeast Utilities Service Company, now Eversource |
| PJM | PJM Interconnection, L.L.C. |
| PJMICC | PJM Industrial Customer Coalition |
| PRA | Planning Resource Auction |
| PURPA | Public Utility Regulatory Policies Act of 1978 |
| RAA | Reliability Assurance Agreement |
| RAR | Resource Adequacy Requirements |
| SMR | Small Modular Reactors |

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.) Docket No. ER26-1479-000

AFFIDAVIT OF JAMES R. DAUPHINAIS

I. INTRODUCTION

THE UNDERSIGNED, James R. Dauphinais, of Chesterfield, Missouri having been duly sworn on oath before a Notary Public, states the following:

Affiant Description

1. I am a Managing Principal of Brubaker & Associates, Inc. (“BAI”), an energy, economic and regulatory consulting firm. My business address is 16690 Swingley Ridge Road, Suite 140, Chesterfield, Missouri 63017. I have worked in the electric utility industry for over 40 years, and during my twenty-eight (28) years of my employment by BAI I have been engaged with respect to resource planning, transmission planning, wholesale power market structure, market power, transmission access, transmission line routing, fuel cost, power procurement and rate issues throughout the United States and portions of Canada. For at least twenty (20) of my over twenty-eight (28) years with BAI, I have monitored developments in the PJM Interconnection, L.L.C. (“PJM”) stakeholder process on behalf of a group of large end-use customers in Illinois. This work has included, but not been limited to, providing recommendations with respect to various market proposals made by PJM either in the stakeholder process or in filings with the Federal Energy Regulatory Commission (“FERC”).

I have also assisted end-use customers with establishing themselves as a load-serving PJM Member and understanding their obligations as a load-serving PJM Member. For at least twenty-six (26) years, I have also participated in the Midcontinent Independent System Operator, Inc. (“MISO”) stakeholder process on behalf of several large end-use customer groups.¹ This has included, but not been limited to, providing extensive feedback to MISO and other MISO stakeholders during the design of MISO’s day-ahead and real-time energy markets and MISO’s Resource Adequacy Requirements (“RAR”) construct including the MISO Planning Resource Auction (“PRA”). It has also included extensive involvement with respect to treatment of Load Modifying Resources and Non-Load Modifying Resource behind the meter generation within the MISO market. During my time with BAI, I have also had over twenty-four (24) years of experience with issues related to the purchase and sale of electric power from or to Public Utility Regulatory Policies Act of 1978 (“PURPA”) Qualifying Facilities that are large industrial or institutional customer cogeneration facilities. This has included providing testimony on the utility purchase of excess electric power from such facilities at avoided cost, the sale of excess electric power by such facilities into the wholesale market, and the sale of backup and maintenance power to such facilities to serve their host load when the facilities are experiencing outages or derates. Prior to my employment with BAI, I was a Senior Engineer in the Transmission Planning Department of the Northeast Utilities Service Company (“NU,” now Eversource). During my over twelve (12) years of employment with NU, I was extensively involved with transmission planning, transmission operation and open access transmission

¹ These groups have members who have facilities with traditional large industrial and institutional electric loads located in the MISO portions of Illinois, Indiana, Iowa, Louisiana, Michigan and Texas or elsewhere within the MISO footprint.

service issues. I have testified previously before FERC as well as many state and provincial regulatory commissions. Attachment 1 to this Affidavit provides a more complete summary of my background and experience.

2. My firm has been retained by the PJM Industrial Customer Coalition (“PJMICC”), the Industrial Energy Consumers of America (“IECA”), the American Forest and Paper Association (“AF&PA”) and the National Railroad Passenger Corporation (“Amtrak”) (collectively, “Industrials/Amtrak”) to: (i) provide background on the use of cogeneration facilities by traditional large industrial, commercial and institutional retail customers, (ii) explain the differences between the traditional use of cogeneration facilities by large retail customers versus co-location of very large computational loads² behind the meter of very large generation facilities, (iii) explain how PJM’s current retail behind the meter generation provisions are consistent with cost causation for the traditional use of cogeneration facilities by large retail customers and FERC’s own longstanding rules with respect to the provision of backup and maintenance power to those retail customers, (iv) explain why the new Firm Contract Demand Service and Non-Firm Contract Demand Service options that FERC has proposed for co-location of large loads behind the meter of generation facilities do not reasonably provide for the backup and maintenance service required by traditional use of cogeneration facilities by large retail customers, (v) explain why PJM’s proposal with respect to the treatment of Qualifying Facilities

² For purposes of this affidavit, when I use the term “computational load”, I am referring to crypto currency, data center and other large computer system electric loads including the electric load of the auxiliary systems necessary to operate the foregoing. The North American Electric Reliability Corporation (“NERC”) Large Load Task Force has focused its recent reliability impact review on computational loads, recently observing that “[t]he penetration of large loads on the [Bulk Power System] is growing, especially computational loads.” Assessment of Gaps in Existing Practices, Requirements, and Reliability Standards for Emerging Large Loads: NERC Large Loads Working Group White Paper (March 2026), at p. 46, available at <https://www.nerc.com/globalassets/our-work/guidelines/reliability/white-paper---assessment-of-gaps.pdf>.

in its compliance filing in this proceeding falls short of being just and reasonable with respect to the provision of backup and maintenance power to retail customers using cogeneration facilities, and (vi) explain why PJM's proposed 50 MW and smaller limitation for non-Qualifying Facility retail behind the meter generation netting falls short of being just and reasonable.

3. Attachments 1 through 4 to this Affidavit were either prepared or obtained under my direction and control. They are part of my Affidavit.

4. I conclude the following in this affidavit:

- Very large computational loads co-located behind the meter of generation facilities are not similarly situated to traditional large commercial, industrial, and institutional loads using Cogeneration Facilities located behind their meter, as very large computational loads generally are not highly thermally integrated with co-located generation facilities.
- For traditional large loads served by Cogeneration Facilities, PJM's current retail behind-the-meter generation netting provisions for NITS charges and capacity requirements are consistent with cost causation principles and FERC's own backup and maintenance power rules for Qualifying Facilities, as they rely on factual data regarding each Qualifying Facility's historical performance rather than assumptions about when outages will occur and whether they will occur simultaneously.
- Firm Contract Demand Transmission Service and Non-Firm Contract Demand Transmission Service are not capable – either alone or in tandem – of providing reliable backup and maintenance power to traditional large retail customers that utilize Qualifying Cogeneration Facilities at rates consistent with cost causation principles and FERC's rules for providing backup and maintenance service to Qualifying Facilities.
- PJM's proposal to limit legacy retail behind-the-meter generation treatment for Qualifying Facilities to those certified or self-certified as of December 18, 2025 falls short of being just and reasonable, and should be modified to cover all Qualifying Facilities regardless of the date they entered service or the date of their certification or self-certification.
- PJM's proposed 50 MW cumulative nameplate capacity limit for continued retail behind-the-meter generation netting for non-Qualifying Facility generation is not just and reasonable because the limit is inappropriately applied to cumulative nameplate capacity rather than to

the amount of retail load that can be netted, and 50 MW is too low given that the large computational load additions driving the Co-Located Loads issue are overwhelmingly 300 MW or larger in size; any limit should initially be set no lower than 200 MW (if not closer to 300 MW).

II. BACKGROUND ON THE USE OF COGENERATION FACILITIES BY TRADITIONAL LARGE INDUSTRIAL, INSTITUTIONAL AND COMMERCIAL RETAIL CUSTOMERS

What are Cogeneration Facilities?

5. FERC defines a Cogeneration Facility to be “equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy”.³ Given that on a combined basis these facilities provide both thermal and electric energy, cogeneration facilities are also commonly referred to as Combined Heat and Power (“CHP”) facilities.

6. There are two types of Cogeneration Facilities – Topping-Cycle Cogeneration Facilities and Bottoming-Cycle Cogeneration Facilities.

7. FERC defines a Topping-Cycle Cogeneration Facility as “a cogeneration facility in which the energy input to the facility is first used to produce useful power output, and at least some of the reject heat from the power production process is then used to provide useful thermal energy”.⁴ A common example of a Topping-Cycle Cogeneration Facility would be a facility with combustion turbine generation fired by natural gas, combustible waste gases, or some combination of the two, that produces electricity and provides steam for heating, cooling, and/or industrial processes via heat recovery steam generators that collect waste heat from the combustion turbine generator. Another example would be a facility with boilers fired by fossil

³ 18 C.F.R. § 292.202(c).

⁴ 18 C.F.R. § 292.202(d).

fuel, combustible waste gases, other forms of combustible waste material, or some combination of the foregoing producing high pressure steam that is run through a steam turbine to produce electricity with the lower pressure steam exiting the steam turbine then being used for heating, cooling, or industrial processes.⁵

8. FERC defines a Bottoming-Cycle Cogeneration Facility as “a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy application or process, and at least some of the reject heat emerging from the application or process is then used for power production”.⁶ A common example of a Bottoming-Cycle Cogeneration Facility would be the use of a heat recovery steam generator to recover heat from an industrial process to produce steam that is then used to generate electricity via a steam turbine.

9. Cogeneration Facilities can include some amount of Supplementary Firing. FERC defines Supplementary Firing as “an energy input to the cogeneration facility used only in the thermal process of a topping-cycle cogeneration facility, or only in the electric generating process of a bottoming-cycle cogeneration facility”.⁷ An example of Supplementary Firing for a Topping-Cycle Cogeneration Facility would be the use of duct burners within the exhaust stream of a combustion turbine to increase the amount of steam that can be produced in the heat recovery steam generator associated with the combustion turbine. An example of Supplementary Firing for a Bottoming-Cycle Cogeneration Facility would be the use of duct burners to stabilize

⁵ It should be noted the use of Nuclear Small Modular Reactors (“SMR”) as the thermal source for Topping-Cycle Cogeneration Facilities is currently being actively explored in the industry and in at least one case in the ERCOT portion of Texas is being actively pursued by X-Energy Reactor Company, LLC at a Dow site. See <https://x-energy.com/media/news-releases/dow-and-x-energy-submit-construction-permit-application-to-the-us-nuclear-regulatory-commission-for-proposed-advanced-nuclear-project-in-texas>.

⁶ 18 C.F.R. § 292.202(e).

⁷ 18 C.F.R. § 292.202(f).

the steam produced from heat recovery from a waste heat source prior to that steam being used to generate electricity via a steam turbine.

Cogeneration Efficiency

10. As I have noted, FERC's definition of Cogeneration Facility requires the "sequential use of energy".⁸ Specifically, for a Topping-Cycle Cogeneration Facility, FERC requires "the use of reject heat from a power production process in sufficient amounts in a thermal application or process to conform to the requirements of the operating standard",⁹ where the "operating standard" is "the useful thermal energy output of the facility must be no less than 5 percent of the total energy output during the 12-month period beginning with the date the facility first produces electric energy, and any calendar year subsequent to the year in which the facility first produces electric energy."¹⁰ For a Bottoming-Cycle Cogeneration Facility, FERC requires "the use of reject heat from a thermal application or process, at least some of which is then used for power production".

11. Cogeneration Facilities, which, as I have noted, are also commonly referred to as CHP systems, are typically highly efficient because they capture heat that would otherwise be wasted and avoid electrical losses by generating electricity at the location where it will largely, if not entirely, be consumed. Specifically, Cogeneration Facilities can achieve efficiencies in excess of 80%, by using waste heat and avoiding electrical losses, compared to the efficiency of approximately 50% for conventional electricity generation with a steam boiler.¹¹

⁸ 18 CFR § 292.202(c).

⁹ 18 CFR § 292.202(s)(1).

¹⁰ 18 CFR § 292.205(a)(1).

¹¹ <https://www.epa.gov/chp/what-chp> (last accessed 3/8/2026).

12. In addition, pursuant to the Federal Power Act (“FPA”),¹² FERC has a rule that dictates the requirements (including requirements respecting minimum size, fuel use and fuel efficiency) for a Cogeneration Facility to be a Qualifying Cogeneration Facility pursuant to PURPA. Specifically, to be a Qualifying Cogeneration Facility, a Cogeneration Facility must meet any applicable standards and criteria specified in 18 C.F.R. §§ 292.205(a), (b) and (d) and, unless exempted, has filed with the Commission a notice of self-certification, or has filed with the Commission an application for Commission certification, that has been granted.¹³ Section 292.205(a) is the operating and efficiency standard for Topping-Cycle Cogeneration Facilities.¹⁴ Section 292.205(b) is the efficiency standard for Bottoming-Cycle Cogeneration Facilities.¹⁵ Section 292.205(d) applies certain additional requirements to Cogeneration Facilities that do not meet certain grandfathering requirements.¹⁶

The Integration of Cogeneration with Commercial, Industrial, and Institutional Processes and the Critical Need for Reliable Backup and Maintenance Power at Just and Reasonable Rates

13. Because of the “sequential use of energy” requirement for Cogeneration Facilities that I have discussed, Cogeneration Facilities are typically highly integrated with the industrial processes, commercial processes, heating processes and/or cooling processes of their host retail customer. This has four major implications.

14. First, there is a need for very high availability from the Cogeneration Facility to meet the host retail customer’s thermal energy needs in order to assure the retail customer can operate its commercial or industrial processes that require thermal energy or to assure the retail

¹² Section 3(18)(A) of the FPA.

¹³ 18 CFR § 292.203(b).

¹⁴ 18 CFR § 292.205(a).

¹⁵ 18 CFR § 292.205(b).

¹⁶ 18 CFR § 292.205(d).

customer can operate its commercial or institutional cooling and heating systems. This has the side effect of the Cogeneration Facility operating at a high electrical capacity factor, either due to the need to produce the necessary thermal energy at a Topping-Cycle Cogeneration Facility or due to the abundance of waste (i.e., reject) heat from the need to run the retail customer's primary thermal process at a Bottoming-Cycle Cogeneration Facility.

15. Second, the electrical output of the Cogeneration Facility can be much less than or much greater than the electrical load of the host retail customer. This is because the thermal energy needs of the retail customer typically dictate how much electric power must be produced by the Cogeneration Facility. For example, if an industrial retail customer has a very high steam need for its processes relative to its electrical needs, the Cogeneration Facility serving that customer will likely have to produce electric power well in excess of that retail customer's needs for its electrical load. This requires there to be a reasonable outlet available to sell that excess electric power at utility-avoided cost or at just and reasonable prices in the wholesale market. In contrast, if an industrial retail customer has a very limited steam need for its processes relative to its electrical needs, the Cogeneration Facility serving that customer will likely produce electric power well below the level that the retail customer needs for its electrical load. This requires that the retail customer be able to purchase supplementary (or supplemental) electric power to cover the deficit from either a utility under a regulated retail electric service rate or from the wholesale power market through a retail supplier at just and reasonable rates where retail customer choice is available.

16. Third, when an outage of Cogeneration Facility occurs, significant electric load of the host retail customer can be lost immediately following, or very shortly following, the outage either due to certain retail customer industrial or commercial processes not being able to operate

without thermal energy from the Cogeneration Facility if it is a Topping-Cycle facility or due to a thermal process being unable to operate because of the inability to dump its waste heat to the Cogeneration Facility if it is a Bottoming-Cycle facility.

17. Finally, most relevant to this current proceeding, there is a very high need for the Cogeneration Facility to be able to purchase reliable backup and maintenance electrical power for the host retail load of the Cogeneration Facility from the local utility, or from the wholesale market via a retail supplier where there is retail customer choice, at a cost that is consistent with cost causation principles. This is necessary to ensure the retail customer can, in a safe and environmentally compliant manner, continue to operate its processes at just and reasonable electric power rates within the bounds of what the remaining thermal energy capability of the Cogeneration Facility can support while it is under a full or partial outage or derate. The ability to continue operation in a safe and environmentally compliant manner within the bounds of what can be supported by the remaining thermal capability of the Cogeneration Facility at just and reasonable electric power rates is a critical requirement to ensure the retail customer can economically meet the needs of its own customers and clients. If that ability cannot be assured, cogeneration may fail to be a practical and/or economic solution to the retail customer's needs, causing the efficiency benefits of cogeneration to be forgone and/or the retail customer to become economically unviable.

18. FERC's rules recognize this critical need by requiring all electric utilities, except where exempted from doing so under FERC's rules, to provide backup and maintenance power to Qualifying Facilities, including Qualifying Cogeneration Facilities, and placing two additional specific requirements on the rates under which that backup and maintenance power is provided in addition to generally requiring the rates be just and reasonable and in the public interest; and

not discriminate against any Qualifying Facility in comparison to rates for sales to other customers served by the electric utility.¹⁷

19. FERC defines backup power as “electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.”¹⁸ This is electric power beyond the host retail customer’s supplemental power consumption that is required by the host retail customer when the Cogeneration Facility experiences a full or partial forced outage or a forced deration.

20. FERC defines maintenance power as “electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.”¹⁹ This is electric power beyond host retail customer’s supplemental power consumption that is required by the host retail customer when the Cogeneration Facility experiences a full or partial scheduled maintenance outage or a scheduled maintenance derate.

21. Consistent with cost causation principles, the aforementioned two additional specific requirements for backup and maintenance power rates under FERC’s rules require that electric utility rates for sales of back-up power or maintenance power to Qualifying Facilities, including Qualifying Cogeneration Facilities:

(1) Shall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak, or both; and

(2) Shall take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with scheduled outages of the utility's facilities.²⁰

¹⁷ 18 CFR § 292.305.

¹⁸ 18 CFR § 292.101(b)(9).

¹⁹ 18 CFR § 292.101(b)(11).

²⁰ 18 CFR § 292.305(c).

III. COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL CUSTOMERS USING COGENERATION ARE NOT THE SAME AS VERY LARGE COMPUTATIONAL LOADS CO-LOCATED BEHIND THE METER OF GENERATION FACILITIES

22. Very large computational loads co-located behind the meter of generation facilities are not similarly situated to traditional large commercial, industrial and institutional loads using Cogeneration Facilities located behind their meter.

23. In particular, very large computational loads by their very nature generally do not have a high thermal energy need relative to the magnitude of their total electric load and do not produce large amounts of waste heat relative to the magnitude of their total electrical load. As such, they are not candidates for Cogeneration Facilities beyond potentially addressing their cooling and heating needs.

24. Thus, very large computational load processes are generally not highly thermally integrated, if integrated at all, with the co-located generation facilities whose meter they may be located behind. This is because those generation facilities will either not be Cogeneration Facilities or be Cogeneration Facilities of greatly limited electrical capability relative to the total magnitude of the electrical load of their host retail customer.

25. Without such integration, the co-located generation facilities will not provide the efficiency benefits that are provided by Cogeneration Facilities in serving commercial, industrial, and institutional customers. In addition, depending on the specific nature of the co-located generation facilities, the generation may be operated only intermittently rather than at the high capacity factor typically required of Cogeneration Facilities to ensure their host retail customer thermal process needs are being reliably fully met.

26. Due to these differences, from a cost causation perspective, very large computational load co-located behind the meter of generation facilities are more akin to wholesale customer load served by utility behind the meter generation²¹ than traditional large commercial, industrial, and institutional load served by behind the meter Cogeneration Facilities.

IV. FOR TRADITIONAL LARGE LOADS SERVED BY COGENERATION FACILITIES, PJM'S CURRENT RETAIL BEHIND THE METER GENERATION PROVISIONS ARE CONSISTENT WITH COST CAUSATION AND FERC'S OWN BACKUP AND MAINTENANCE POWER RULES FOR QUALIFYING FACILITIES

27. PJM's longstanding provisions²² for the netting of retail customer load with generation located behind the meter of those customers are consistent with cost causation for traditional large commercial, industrial, and institutional customers using Cogeneration Facilities, and consistent with FERC's rules for backup and maintenance power for Qualifying Facilities.

Retail BTMG Netting for Transmission

28. With respect to the transmission component of backup and maintenance power, Section 34.2 of the PJM Open Access Transmission Tariff ("PJM Tariff") currently excludes the load served by the operating behind the meter generation of a retail customer from that retail customer's daily load for Network Integration Transmission Service ("NITS").²³ This has the

²¹ An example of utility behind the meter generation, also known in PJM as non-retail behind the meter generation, is a transmission dependent utility whose load is being served in part by the transmission dependent utility's conventional generation facilities that are located on its side of the meter between it and its transmission provider.

²² I have been advised by counsel that the Commission found that these provisions may be subject to change in light of the Commission's December 18, 2025 order issued in Docket No. EL25-49-000. I am also aware that PJMICC and IECA have a pending rehearing request, filed on January 20, 2026, challenging the Commission's determination with respect to findings concerning PJM's rules for netting and retail behind-the-meter generation.

²³ PJM Tariff § 34.2 (Effective 9/17/2010 Docket No. ER10-2710-000).

effect of excluding the portion of a retail customer's load served by its operating behind the meter generation from its zonal daily load ("DCPZ"), which is the retail customer's daily load within a transmission pricing zone coincident with the time of the annual peak of the zone.²⁴ This nets the output of the behind the meter generation from the retail customer's load such that the retail customer's DCPZ is the retail customer's demand placed on the transmission system at the time of the annual peak of the transmission pricing zone the retail customer is located within, just like it is for retail customers who do not have behind the meter generation. The DCPZ is applied to 1/365th of the annual NITS rate for the zone to determine the retail customer's NITS charges for each day. Hence, whether a retail customer has behind the meter generation or not, its NITS charges are based on the demand the retail customer has historically put on the transmission system at the time of the annual peak of the transmission pricing zone.

29. Given zonal transmission costs under the PJM Tariff are currently allocated to load on an annual coincident peak demand basis, this netting approach is consistent with cost causation. Furthermore, it is consistent with FERC's rule for backup and maintenance power for Qualifying Facilities²⁵ as it does not assume that a retail customer's behind the meter Qualifying Facility will be experiencing an outage at the time of the annual transmission system peak and instead relies on factual data, in the form of the behind the meter Qualifying Facility's historical performance during the time of the annual peak of the transmission pricing zone, when allocating transmission costs to the retail customer. Also consistent with FERC's backup and maintenance rule,²⁶ this approach inherently avoids assuming that all Qualifying Facilities will be

²⁴ PJM Tariff § 34.1 (Effective 2/18/2020 Docket No. ER20-646-000).

²⁵ 18 CFR § 292.305(c).

²⁶ *Id.*

experiencing an outage at the same time. Again, it instead relies on factual data, in the form of the historical performance of each Qualifying Facility, not an assumption with respect to whether they will all be out of service at the same time.

30. It is also important to note the retail behind the meter generation netting approach would work under different cost allocation methods besides the annual coincident peak demand method. For example, if future facts and circumstances warranted a change from the annual zonal transmission system peak to the use of 12 monthly coincident peaks for the zone, to the top 100 transmission system demand hours for the zone, or to the evening hours of annual transmission peak day for the zone, the current retail behind the meter netting approach would still properly allocate transmission costs to retail customers based on the historical demand they place on the transmission system during the hours being used for the cost allocation consistent with using factual data, not assumptions.

31. Furthermore, given the high capacity factor typically associated with Qualifying Cogeneration Facilities that I discussed earlier, Qualifying Facility Cogeneration would not be expected to perform significantly less effectively using a larger number of hours for allocation rather than a smaller number of hours.

32. It is also important to understand that the transmission system is not planned assuming that all Cogeneration Facilities will experience an outage at the same time or will not otherwise be running. Based on my experience, consistent with their high capacity factor nature, Cogeneration Facilities are generally modeled in power flow and stability analysis as electrically producing power at the level necessary to support the thermal process needs of their retail host load, with only any stretch in electrical capability they may have through supplementary firing potentially being subject to economic dispatch. Furthermore, in my experience, transmission

planners do not study or examine scenarios where it is assumed large numbers of Cogeneration Facilities will be offline at the same time, as there is no factual basis to support such an assumption. Both of these points further reinforce why transmission costs should be allocated to retail customers with Cogeneration Facilities on the basis of the net demand they place on the transmission system during the hours used for cost allocation rather than their gross load during those hours, as the sum of their individual gross loads is never under any circumstance placed on the transmission system.

33. Also from my experience, while transmission planners do consider the contingency loss of individual generation assets at Cogeneration Facilities, when those contingencies are examined by transmission planners, those planners take into consideration how the electrical load of the host retail customer will change both immediately following the contingency and shortly thereafter due to the highly integrated nature of the Cogeneration Facility and its host retail customer. Regardless, such contingencies at best drive local transmission needs and only if the contingency is most severe generation contingency in that local area after subtracting off the electrical load that will be lost by the Cogeneration Facility's host retail customer. As such, these contingencies are not driver of the bulk majority of transmission system costs any more than the non-coincident peak demand of individual loads is a driver of the bulk majority of transmission system costs. Instead, the bulk majority transmission system costs are driven by total system demand on the transmission system, which is why transmission costs are typically allocated to load using a coincident peak demand cost allocation method.

Retail BTMG Netting for Capacity²⁷

34. With respect to the capacity component of backup and maintenance power, Schedule 8 of the PJM Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (“PJM Reliability Assurance Agreement” or “RAA”) currently establishes the Obligation Peak Load of a party to the RAA as the daily summation of the weather-adjusted coincident summer peak, last preceding the Delivery Year, of the retail customers in the zone net of the operating behind the meter generation of those customers.²⁸ The Daily Unforced Capacity Obligation of the party is then determined as its Obligation Peak Load multiplied by the applicable Final Zonal Reliability Pricing Model Scaling Factor and the PJM Forecast Pool Requirement.²⁹ Thus, the PJM capacity requirement for retail customers is based on the weather adjusted demand of those customers at the time of the summer coincident peak net of the output of any behind the meter generation at that time of that summer coincident peak. This nets the output of the behind the meter generation from the retail customer’s load such that the retail customer’s capacity requirement is based the retail customer’s demand placed on the PJM market at the time of the summer coincident peak, just like it is for retail customers who do not have behind the meter generation. Hence, whether a retail customer has behind the meter generation or not, its PJM capacity requirement is based on the demand the retail customer has historically put on the PJM market at the time of the PJM summer coincident peak.

²⁷ While PJM did not include any proposed changes to the PJM Reliability Assurance Agreement in its filing in ER26-1479-000, PJM, in Footnote 2 of the first page of its transmittal letter for its February 23, 2026 Compliance Filing, indicated it anticipates needing to make subsequent conforming clean-up filings to the PJM Reliability Assurance Agreement, among other documents, in regard to the compliance filings being submitted in response to the FERC’s Order to Show Cause in Docket No. EL25-49, *et al.*

²⁸ PJM RAA, Schedule 8, Section A (Effective: 8/31/2024 – Docket No. ER24-2447-003).

²⁹ *Id.*

35. Given capacity requirements under the PJM RAA are currently allocated to load on a summer coincident peak demand basis, this netting approach is consistent with cost causation. Furthermore, like with retail behind the meter generation netting for NITS charges, it is consistent with FERC's rule for backup and maintenance power for Qualifying Facilities³⁰ as it does not assume that a retail customer's behind the meter Qualifying Facility will be experiencing an outage at the time of the summer coincident peak and instead relies on factual data, in the form of the behind the meter Qualifying Facility's historical performance during the time of the summer coincident peak, when allocating transmission costs to the retail customer. Also consistent with FERC's backup and maintenance rule,³¹ this approach inherently avoids assuming that all Qualifying Facilities will be experiencing an outage at the same time. Again, it instead again relies on factual data, in the form of the historical performance of each Qualifying Facility, not an assumption with respect to whether they will all be out of service at the same time.

36. Also, like with retail behind-the-meter netting for NITS charges, the current retail behind-the-meter generation netting approach for capacity requirements would still work under different cost allocation methods than the current summer coincident peak demand method. Specifically, regardless of the hours used for allocation, the current retail behind-the-meter netting approach would still properly allocate capacity requirements to retail customers based on the historical demand they place on the transmission system during the hours being used for the allocation of capacity requirements, consistent with using factual data, not assumptions. This sends a strong cost signal for retail behind the meter generation to operate and fully serve the

³⁰ 18 CFR § 292.305(c).

³¹ *Id.*

electric load of their host retail customer during times of grid stress. It does so because the times of grid stress generally align with the time periods used for cost allocation and it is at those very times that NITS billing units and capacity requirements are determined under retail behind the meter generation netting.

37. Finally, just as with retail behind-the-meter generation netting for NITS charges, given the high capacity factor typically associated with Qualifying Cogeneration Facilities that I discussed earlier above, Qualifying Facility Cogeneration would not be expected to perform significantly less effectively using a larger number of hours allocating capacity requirements rather than a smaller number of hours.

V. FIRM CONTRACT DEMAND TRANSMISSION SERVICE AND NON-FIRM CONTRACT DEMAND TRANSMISSION SERVICE ARE UNABLE TO PROVIDE JUST AND REASONABLE BACKUP AND MAINTENANCE SERVICE TO QUALIFYING COGENERATION FACILITIES

38. FERC in its December 18, 2025 order in Docket No. EL25-49, *et al.*, ordered PJM to provide two new transmission services for large loads co-located behind the meter of generation facilities (“Co-Located Loads”) – who would not be permitted to take NITS based on their net load -- as an alternative to taking NITS based on their gross load: (i) Firm Contract Demand Service and (ii) Non-Firm Contract Demand Service.³² While I understand from counsel that these services are subject to the paper hearing in Docket No. EL25-49-000, these new services have direct bearing on the just and reasonableness of continued availability of retail behind-the-meter generation netting for Qualifying Facilities.

³² 193 FERC ¶ 61,127 (2025), at P 193.

39. Firm Contract Demand Transmission Service would allow Co-Located Loads to take firm transmission service up to a pre-specified MW quantity rather than having to take NITS based on their gross demand.³³

40. Non-Firm Contract Demand Transmission Service would allow non-firm transmission service when such service is not needed on a regular basis.³⁴ It would need to be reserved in advance on an as-available basis during normal, non-emergency operating conditions and would be subject to curtailment during emergency conditions.³⁵ There would be no charge for generation capacity for the portion of the load taking the service, and PJM would have no obligation to obtain generation capacity for the load.³⁶

41. While its specific provisions for these two transmission services are the subject of a paper hearing in Docket No. EL25-49-000, PJM in its February 23, 2026 initial brief in that paper hearing (“PJM Paper Hearing Initial Brief”) in part proposed:

- The entire gross load of the Co-Located Load be covered by a combination of Firm Contract Demand Transmission Service and Non-Firm Contract Demand Transmission Service.³⁷
- Actual deliveries of power under Non-Firm Contract Demand Transmission Service would need to be pre-scheduled with, and approved by, PJM.³⁸
- To the extent the Co-Located Load takes any Non-Firm Contract Demand Service it must install control technologies, potentially in the form of a Remedial Action Scheme (“RAS”), to assure its load can be curtailed

³³ *Id.* at P 208 through P 213.

³⁴ *Id.* at P 214.

³⁵ *Id.* at P 215.

³⁶ *Id.* at P 218.

³⁷ Docket No. EL25-49-000, *et al.*, Initial Brief of PJM Interconnection, LLC, February 23, 2026, Attachment A at Section 709.2(c).

³⁸ Docket No. EL25-49-000, *et al.*, Initial Brief of PJM Interconnection, LLC, February 23, 2026 at 9-10 and Attachment B at ¶ 12.

when required by PJM and the Non-Firm Contract Demand Service taken by the Co-Located Load does not exceed the amount approved by PJM.³⁹

- Penalties and potential disqualification that would apply when a Co-Located Load takes Contract Demand Service in excess of that authorized by PJM, fails to respond to load shedding and curtailment procedures, or has a misoperation of control technologies and protection systems.⁴⁰

42. Firm Contract Demand Transmission Service and Non-Firm Contract Demand Transmission Service, neither alone nor in tandem, are capable of providing reliable backup and maintenance power to traditional large commercial, industrial and institutional retail customers that utilize Qualifying Cogeneration Facilities at a cost that is consistent with cost causation principles and FERC's rules for providing backup and maintenance service to Qualifying Facilities.

43. As I noted earlier, reliable backup and maintenance power consistent with cost causation principles and FERC's rules for backup and maintenance power is necessary for these retail customers to ensure they can in a safe and environmentally compliant manner continue to operate their processes at just and reasonable electric power rates within the bounds of what the remaining thermal energy capability of their Qualifying Cogeneration Facility can support while it is under a full or partial outage or derate. The ability to continue operation in a safe and environmentally compliant manner within the bounds of what can be supported by the remaining thermal capability of the Cogeneration Facility at just and reasonable electric power rates is a critical requirement to ensure the retail customer can economically meet the needs of its own customers and clients. If that ability cannot be assured, cogeneration may fail to be a practical

³⁹ Docket No. EL25-49-000, *et al.*, Initial Brief of PJM Interconnection, LLC, February 23, 2026, Attachment A at Sections 708(c) and 713.6.

⁴⁰ *Id.* at Sections 713.7 and 713.8.

and/or economic solution to the retail customer's needs, causing the efficiency benefits of cogeneration to be forgone and/or the retail customer to become economically unviable.

44. While Contract Demand Transmission Service would provide reliable backup and maintenance power, it would not provide it at rates that are consistent with cost causation or FERC's rules for the rates for the provision of backup and maintenance power to Qualifying Facilities. Specifically, it requires payments for the service based on the contracted amount. As a result, it would inherently assume, in violation of FERC's rules for backup and maintenance power for Qualifying Facilities,⁴¹ that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak, or both, without any factual data to support such an assumption. As I have discussed at length in this affidavit, this is not a reasonable assumption for Qualifying Cogeneration Facilities.

45. Non-Firm Contract Demand Transmission Service would fall short in two respects. First, it is incapable of providing backup power for forced outages of Qualifying Cogeneration Facilities because the actual usage Non-Firm Contract Demand Transmission Service would have to be pre-scheduled with, and approved by, PJM in advance of its use, and forced outages cannot be known beforehand. Second, the service is not reliable and risky to use as it is only available on an as-available basis, subject to interruption during emergencies, and subject to automated interruption. It is not a product that could be used to provide safe and environmentally compliant maintenance power to traditional commercial, industrial and

⁴¹ 18 CFR 292.305(c).

institutional retail customers with Qualifying Cogeneration Facilities, never mind backup power to them.

VI. PJM'S PROPOSAL WITH RESPECT TO ALLOWING EXISTING CERTIFIED QUALIFYING FACILITIES AS OF DECEMBER 18, 2025 TO CONTINUE TO USE RETAIL BTMG NETTING FOR NITS AND CAPACITY REQUIREMENTS FALLS SHORT OF BEING JUST AND REASONABLE

46. PJM in its February 23, 2026 compliance filing in this proceeding has proposed to allow all retail customer behind-the-meter generation that as of December 18, 2025 was a Qualifying Facility under PURPA to continue to be able to be netted with its load for NITS charges and capacity requirements after the completion of three-year transition period that would otherwise end such netting for this generation.⁴² PJM indicates it made this proposal in its compliance filing as an extension of the legacy treatment of this generation under PURPA.⁴³ PJM also notes that given these retail behind-the-meter generation arrangements have been in place and netted against Network Loads within PJM without known operational issues to date, PJM proposes to allow such arrangements (some of which have been in place for decades) to qualify for legacy treatment and continue to be eligible to net under existing behind-the-meter generation rules.⁴⁴

47. PJM's proposal for legacy retail behind-the-meter generation treatment for retail customers with behind-the-meter generation that, as of December 18, 2025, was a Qualifying Facility is a step toward providing a just and reasonable outcome for Qualifying Cogeneration

⁴² PJM February 23, 2026 Compliance Filing Transmittal Letter at Section III.A.2. and Attachment A, Definitions R-S, Retail behind the Meter Generation.

⁴³ PJM February 23, 2026 Compliance Filing Transmittal Letter at Section III.A.2.a.

⁴⁴ *Id.*

Facilities. However, the step falls short of providing a just and reasonable outcome for Qualifying Cogeneration Facilities in two respects.

48. First, PJM's proposal fails to recognize there may be some Cogeneration Facilities within the PJM footprint that fully meet FERC's requirements to be a Qualifying Cogeneration Facility (and, thus, a Qualifying Facility), except they do not currently have a FERC-approved certification or self-certification of their Qualifying Cogeneration Facility status because they do not make sales of excess power either at avoided cost to electric utilities or into the wholesale power market. In addition, these Cogeneration Facilities have historically not needed certification or self-certification as a Qualifying Cogeneration Facility in order for the electrical load of their host retail customer to have reliable access to backup and maintenance power through just and reasonable rates through PJM's current retail behind the meter generation netting provisions for NITS charges and capacity requirements. To address this first shortcoming that prevents PJM's Qualifying Facility proposal from being just and reasonable, the proposal would need to be modified to cover all Qualifying Facilities that were in service on or prior to December 18, 2025, regardless of the date of their certification or self-certification as a Qualifying Facility. This would ensure that generation facilities that were in service on December 18, 2025 that were fully able to meet FERC's requirements to be a Qualifying Facility, except for not having a FERC-approved certification or self-certification due to not previously having a need for such certification or self-certification, would be able to remedy their lack of certification or self-certification prior to the conclusion of the proposed three-year transition period for the end of the current PJM retail behind the meter generation netting provisions in order to preserve their ability to use those provisions after the end of the transition period.

49. Second, PJM has effectively erroneously concluded FERC's rules for the provision of backup and maintenance power to Qualifying Facilities⁴⁵ ceased to be applicable in PJM footprint upon FERC's issuance of its December 18, 2025, Show Cause Order in Docket No. EL25-49-000, *et al.* FERC made no such finding in its December 18, 2025, Show Cause Order as it does not address its PURPA backup and maintenance power rules for Qualifying Facilities in that order. Given this, and the proposed Firm Contract Demand Transmission Service and Non-Firm Contract Demand Transmission Service options for Co-Located Loads are unable to provide just and reasonable backup and maintenance power to Qualifying Cogeneration Facilities for the reasons I have discussed earlier in this affidavit, the proper legacy treatment for Qualifying Facilities would be to allow all Qualifying Facilities to continue to be eligible to use PJM's current retail behind-the-meter generation netting provisions for NITS charges and capacity requirements regardless of when that Qualifying Facility entered service or was certified or self-certified as a Qualifying Facility. Therefore, to address this second shortcoming that prevents PJM's Qualifying Facility proposal from being just and reasonable, the proposal would need to be modified to cover all Qualifying Facilities, regardless of the date they entered service or the date of their certification or self-certification as a Qualifying Facility.

50. It is important to note that providing legacy retail behind-the-meter generation netting treatment for all Qualifying Facilities would not provide a "back door" for very large computational loads to bypass the Co-Located Load provisions of FERC's December 18, 2025, Show Cause Order in Docket No. EL25-49-000, *et al.* As I have discussed earlier in this affidavit, very large computational load processes are generally not highly thermally integrated,

⁴⁵ 18 CFR § 292.305(c).

if integrated at all, with any co-located generation facilities whose meter they may be located behind. This is because those generation facilities will either not be Cogeneration Facilities or would only be Cogeneration Facilities of greatly limited electrical capability relative to the total magnitude of the electrical load of their host retail customer. Furthermore, Qualifying Small Power Production Facilities, the other type of Qualifying Facility besides Qualifying Cogeneration Facilities, are, except when a waiver is granted by FERC, limited to 80 MW in size under FERC's rules.⁴⁶ As a result, the total electrical capability of a Qualifying Small Production Facility would also be greatly limited relative to the total magnitude of a large computational load, which as I will discuss later in this affidavit, would likely be 300 MW or more. Therefore, providing legacy retail behind-the-meter generation netting treatment to all Qualifying Facilities would not provide "back door" for very large computational loads to bypass FERC's Co-Located Load provisions of its December 18, 2025, Show Cause Order in Docket No. EL25-49-000, *et al.*

VII. PJM'S PROPOSED 50 MW AND SMALLER LIMITATION FOR NON-QUALIFYING FACILITIES TO USE RETAIL BEHIND THE METER GENERATION NETTING ALSO FALLS SHORT OF BEING JUST AND REASONABLE

51. In addition to proposing to allow all retail customer behind-the-meter generation that as of December 18, 2025 was a Qualifying Facility under PURPA to continue to be able to be netted with its load for NITS charges and capacity requirements after the completion of three-year transition period that would otherwise end such netting for this generation, PJM in its February 23, 2026 compliance filing in this proceeding is also proposing two other such

⁴⁶ 18 CFR §§ 292.203(a), 292.203(c) and 292.204(a).

continuations of retail behind the meter generation netting for NITS charges and capacity requirements.

52. First, PJM proposes to continue to allow retail behind the meter generation netting for NITS charges and capacity requirements beyond the three-year transition period for all generation used to serve a retail load served by a Network Customer if the retail behind the meter generation is subject to contractual arrangements (including but not limited to a bilateral agreement or an interconnection agreement) that were in effect as of December 18, 2025 through the end of the term of such agreement, which may be renewed or extended per the terms of such agreement.⁴⁷ PJM indicates it made this proposal in its compliance filing pursuant to the legacy treatment of existing contractual agreements provided for by FERC under its December 18, 2025, Show Cause Order in Docket No. EL25-49-000, et al.⁴⁸ PJM also notes that, given these retail behind the meter generation arrangements, like those for PURPA Qualifying Facilities, have been in place and netted against Network Loads within PJM without known operational issues to date, it proposes to allow such arrangements, which in some cases have been in place for decades, to qualify for legacy treatment and continue to be eligible to net under existing behind-the-meter generation rules.⁴⁹ I agree with this first additional proposed extension of retail behind-the-meter generation netting beyond the three-year transition period, and also agree with PJM's arguments with respect to it.

53. Second, PJM proposes to continue to allow retail behind the meter generation netting for NITS charges and capacity requirements beyond the three-year transition period for

⁴⁷ PJM February 23, 2026 Compliance Filing Transmittal Letter at Section III.A.2. and Attachment A, Definitions R-S, Retail behind the Meter Generation.

⁴⁸ PJM February 23, 2026 Compliance Filing Transmittal Letter at Section III.A.2.a.

⁴⁹ *Id.*

all generation whose cumulative nameplate capacity rating is no greater than 50 MW (not including back-up generation at the same electrical location as the retail load that can only be used to serve such retail load during conditions that may threaten the integrity or the PJM Region or the regional power system).⁵⁰ PJM justifies its proposed cumulative nameplate capacity limit for the continued retail behind the meter generation netting for generators not otherwise eligible for continuation of netting under PJM's Qualifying Facility and existing contract proposals as not being too high when compared to a lower 10 or 20 MW limit: (i) excluding a much larger volume of retail customers whose grid impacts are small or *de minimis* when compared with Co-Located Loads coming online today and (ii) potentially causing loss of that generation altogether due to significant transmission upgrades that may be required for that generation to become a market resource.⁵¹ With respect to justifying why the 50 MW limit is not too low, PJM solely relies on referencing a PJM Board letter defining large load additions as individual load additions at or above 50 MW at a single point of interconnection.⁵² Furthermore, PJM requests that, if its proposed Qualifying Facility continuation of retail behind-the-meter generation meeting for NITS charges and capacity requirements is not accepted, FERC accept as a potential stop gap a higher limit of possibly as high as 200 MW to avoid the same potential loss of generation capacity issue that it claims would be associated with a 10 or 20 MW limit.⁵³ Under such an approach, PJM would commit to reviewing additional data on the size and extent of retail

⁵⁰ PJM February 23, 2026, Compliance Filing Transmittal Letter at Section III.A.2. and Attachment A, Definitions R-S, Retail behind the Meter Generation.

⁵¹ PJM February 23, 2026, Compliance Filing Transmittal Letter at Section III.A.2.c.

⁵² *Id.* The January 16, 2026 PJM Board Letter does not include any factual or technical detail or support for the proposed 50 MW threshold. See Board Decisional Letter on Critical Issue Fast Path - Large Load Additions (Jan. 16, 2026) at p. 2, available at <https://www.pjm.com/-/media/DotCom/about-pjm/who-we-are/public-disclosures/2026/20260116-pjm-board-letter-re-results-of-the-cifp-process-large-load-additions.pdf>.

⁵³ *Id.*

behind-the-meter generation, which could inform whether the initial higher stop gap limit should be further refined through a separate future filing.⁵⁴

54. PJM's proposed 50 MW cumulative nameplate capacity limit for determining which retail behind-the-meter generation facilities, besides those who qualify under its Qualifying Facility and existing contract proposals, would be eligible for continued retail behind the meter generation netting treatment after the three-year transition period is not just and reasonable. The proposed limit is not just and reasonable for two reasons. First, it imposes a cap based on the cumulative nameplate capacity of the generation behind the customer's meter, rather than limiting the amount of load that can be netted behind the meter. Second, the proposed threshold amount of 50 MW is too low.

The Proposed 50 MW Limit is Inappropriately Applied to Cumulative Nameplate Capacity Rather than the Amount of Retail Load that can be Netted

55. PJM's proposal to apply its proposed 50 MW limit to cumulative nameplate capacity rather than the amount of retail load that can be netted against generation located behind that load's meter is not just and reasonable for at least four reasons.

56. First, nameplate capacity does not necessarily indicate the actual electrical capability of behind-the-meter generation. This can be particularly the case with generation served from a common steam system, where it is the total capability of the steam system that limits the combined electrical capability of the steam turbine generation facilities fed from it, not the cumulative (i.e., the sum of the) nameplate capacity of the steam turbines. In such situations, it would be inappropriate to apply the limit to cumulative nameplate capacity, as that amount could be significantly higher than the actual electrical capability of the generation.

⁵⁴ *Id.*

57. Second, the cumulative nameplate capacity of the behind-the-meter generation, even when it does indicate the actual electrical capability of that behind-the-meter generation, may be intentionally much larger than the retail load at its location in order to provide redundancy with respect to serving that load. In this situation, it would also be inappropriate to apply the limit to the cumulative nameplate capacity of the generation as that amount could be significantly higher than the actual retail load being served by that generation solely due to the redundancy being provided to improve the reliability of serving that load with behind the meter generation.

58. Third, the proposal to use the cumulative nameplate capacity of the behind-the-meter generation fails to account for a critical operational limitation. Specifically, the generation could not be operated in excess of the retail load it is serving behind the meter unless the generation has an interconnection agreement with PJM or the applicable transmission owner that allows it to put its power in excess of the retail load it is serving behind the meter onto the transmission system. Without such an agreement, the generation is effectively constrained to serving only the retail load behind the meter. When limited in this matter, the largest generation contingency the generator could place onto the PJM transmission system is a loss of generation equal to the amount of retail load the behind-the-meter generation is serving, not its cumulative nameplate capacity. Furthermore, this concept is readily extendable to a situation where there is a limit on the amount of retail load that can be served behind the meter by limiting the output of the generation to the lesser of: (i) the current demand of the retail load or (ii) the MW limit placed on retail behind the meter generation netting.

59. Finally, the proposal fails to consider a large portion of behind the meter generation may not be associated with serving the electrical load of the host retail customer

behind that customer's meter but rather associated with either PURPA Qualifying Facility sales at avoided cost to an electric utility or sales into the wholesale market within the bounds the generation facility's interconnection agreement. As I noted earlier in this affidavit, this situation is not uncommon for Qualifying Cogeneration Facilities with a host retail customer that has a very large steam need as the level of electric power production necessary by the Cogeneration Facility to produce the heat needed to meet the steam requirement of the host retail customer may be much higher than the electrical load of the Cogeneration Facility's host retail customer.⁵⁵ In addition, for non-Cogeneration Facilities, this situation can exist due the economy of scale benefits of constructing a generation facility to not only serve the electrical load of the host retail customer behind the meter but to also make wholesale power sales. Regardless of why the behind the meter generation facility makes avoided cost or wholesale market sales, it is important to note the loss of the total electrical capability of the generation facility, less any electrical load of the host retail customer that is lost with the loss of that electrical capability, has already been considered as a generation contingency in determining the transmission upgrades that were necessary to allow interconnection of the generation facility, and, as a result, the transmission system has been built to accommodate that level of generation contingency. Therefore, provided the generation operates within the bounds of its interconnection agreement and the bounds of PJM's wholesale market rules, retail behind the meter generation with excess power sales does not introduce any circumstances that should preclude it from still being able to utilize retail behind the meter generation netting for NITS charges and capacity requirements for

⁵⁵ As an aside, it is important to note FERC's rules for backup and maintenance power must be met for all Qualifying Facilities regardless of whether a Qualifying Facility has any excess power sales either at avoided cost to an electric utility or into the wholesale power market.

its host retail customer up to any MW limit on such netting. This would be accomplished by calculating the output of the generation to the PJM market (including any avoided costs sales to an electric utility) as the gross output of the generation less the lower of: (i) the current demand of the retail load being served by the generation behind the meter or (ii) the MW limit placed on retail behind the meter generation netting.

60. For the above reasons, the MW limit that is ultimately approved by FERC should be a limit on the maximum MW of retail load that can be netted with behind-the-meter generation when determining NITS charges and capacity requirements for that retail load. It should not be a cumulative nameplate capacity limit that determines which locations where retail behind-the-meter generation netting will be allowed, as proposed by PJM.

PJM's Proposed 50 MW Limit is Too Low

61. PJM's proposed 50 MW limit is too low for at least four reasons.

62. First, PJM is solely relying on the PJM Board's definition of large load additions as 50 MW at a single site to justify its proposed 50 MW limit as not being too low. The PJM Board is not a regulatory body that has made a finding of fact that 50 MW is the appropriate limit for retail behind-the-meter generation netting. Furthermore, the PJM Board did not develop its large load definition in the context of establishing a limit on retail behind-the-meter generation netting. As such, it should be given no weight with respect to setting a limit on retail behind-the-meter netting.

63. Second, PJM has not provided any evidence that the concerns it expressed with respect to a limit of 10 or 20 MW – (i) excluding a large volume of retail customers whose grid impacts are small or *de minimis* when compared with Co-Located Loads coming online today and (ii) potentially causing a loss of that generation altogether due to significant transmission

upgrades that may be required for them to become market resources – are not still present with a 50 MW limit. Also, it appears PJM is concerned its 50 MW limit may be too low in this respect, particularly if its proposal for Qualifying Facilities is not accepted by FERC. Specifically, as I noted earlier in this affidavit, PJM has requested that FERC adopt a higher limit, potentially as high as 200 MW, as a stopgap if FERC chooses not to accept PJM’s proposal with respect to Qualifying Facilities.⁵⁶

64. Third, PJM, in its February 23, 2026 compliance filing in this proceeding, indicated that Qualifying Facility retail behind the meter generation and retail behind the meter generation with existing contracts have been in place and netted against Network Loads within PJM without known operational issues to date, and in some cases have been in place for decades. While I certainly agree this is true for Qualifying Facilities and retail behind the generation with existing contracts, it must also be generally true for all other existing retail behind-the-meter generation that has been in place for many years within the PJM footprint. Furthermore, its existence suggests that retail behind-the-meter generation netting at the MW level for individual retail customer locations for which it has historically occurred is something that can be readily accommodated in normal transmission planning and transmission operations such that it does not need extraordinary treatment, such as prohibiting it. This in turn suggests that a better basis for developing a limit on how much retail behind the meter generation netting should be permitted behind each retail customer’s meter would be to examine the largest amount of retail behind the meter generation netting that has been readily accommodated in recent years and comparing that

⁵⁶ PJM February 23, 2026 Compliance Filing Transmittal Letter at Section III.A.2.c.

to the typical size of the very large computational load additions that have triggered the need to consider the Co-Located Loads issue in the first place.

65. Finally, there is evidence that the typical size of very large computational load additions, which are the load additions driving the need to examine the Co-Located Loads issue, is much larger than 50 MW.

66. For example, in the context of FERC's Advanced Notice of Proposed Rulemaking in Docket No. RM26-4-000, Indicated PJM Transmission Owners stated:

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.⁵⁷

67. In addition, in early July 2025, in Michigan Public Service Commission ("MPSC") Case No. U-21859, I performed and presented in rebuttal testimony an analysis of the MW size of the data center load addition inquiries that Consumers Energy Company had received up to that point in time. A summary of the results of that analysis is presented in Attachment 2 of this affidavit, and the raw data upon which it was performed is provided in Attachment 3 of this affidavit.⁵⁸ As shown in Attachment 2, my analysis indicated that the sum of the MWs of potential data center load addition inquiries Consumers Energy Company had received associated with a MW size of 300 MW or less makes up less than 7% (1,049 MW) of the 15,249 MW in total large data center load addition inquiries that it had received. In other words, over 93% (14,200 MW) of the total MWs of large data center load addition inquiries Consumers Energy Company had received were from load additions greater than or equal to 300

⁵⁷ 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) at 2-3.

⁵⁸ The workpaper used to produce Attachment 2 of this affidavit is available on request to parties in this current proceeding from Industrials/Amtrak Counsel.

MW in size. While Consumers Energy Company is located within MISO rather than PJM, there is no reason to believe the results for Consumers Energy Company are not indicative of what a similar analysis would likely show for similar large electric utilities in PJM. In other words, the large load additions to be concerned with are not all large load additions 50 MW and larger, but rather those 300 MW or higher, as evidenced by my analysis, since they make up the vast majority of what is being proposed. Accordingly, more concrete evidence exists to support a 300 MW threshold than a 50 MW threshold.

68. In addition, in September 2025, subsequent to the performance of my early July 2025 analysis based on Consumers Energy Company data, I became involved in Illinois Commerce Commission (“ICC”) Docket No. 25-0677. That Illinois proceeding concerned Commonwealth Edison Company (“ComEd”) – a very large Illinois electric utility located within PJM. In that proceeding, ComEd Witness Max Leichtman in direct testimony indicated “the average size of a unique large demand project that began the process of obtaining electric service from ComEd in the last twelve months is approximately 700 MWs, roughly the equivalent of 1,400 big box stores.”⁵⁹ Furthermore, in response to discovery in that proceeding, ComEd provided a data request response that publicly disclosed the MW size of each of the aforementioned projects.⁶⁰ A copy of this ComEd discovery response in ICC Docket No. 25-0677 is provided as Attachment 4 to my affidavit. As can be seen in Attachment 4, in 2025, through the August 29, 2025 date of the ComEd discovery response, twelve (12) load additions began the process of obtaining electric service from ComEd. Ten (10) of the twelve (12) proposed load additions, representing 8,212 MW (98.86%) of the total of 8,307 MW of requested

⁵⁹ ICC Docket No. 25-0677, ComEd Ex. 1.0, Direct Testimony of Max Leichtman at 6.

⁶⁰ ICC Docket No. 25-0677, ComEd Response to Data Request No. NRG-ComEd 1.02.

electric service, were from proposed loads with a magnitude of 300 MW or greater. This provides further concrete evidence to support a 300 MW threshold rather than a 50 MW threshold.

69. For the foregoing reasons, PJM's proposed limit of 50 MW is too low. Concrete evidence exists to support a 300 MW threshold, and any limit should instead initially be set no lower than 200 MW (if not closer to 300 MW), regardless of whether PJM's proposal for Qualifying Facilities is accepted or that proposal is modified as I have recommended earlier in this affidavit.

VIII. CONCLUSION

70. In summary, I conclude the following:

- Very large computational loads co-located behind the meter of generation facilities are not similarly situated to traditional large commercial, industrial, and institutional loads using Cogeneration Facilities located behind their meter, as very large computational loads generally are not highly thermally integrated with any co-located generation facilities.
- For traditional large loads served by Cogeneration Facilities, PJM's current retail behind-the-meter generation netting provisions for NITS charges and capacity requirements are consistent with cost causation principles and FERC's own backup and maintenance power rules for Qualifying Facilities, as they rely on factual data regarding each Qualifying Facility's historical performance rather than assumptions about when outages will occur and whether they will occur simultaneously.
- Firm Contract Demand Transmission Service and Non-Firm Contract Demand Transmission Service are not capable – either alone or in tandem – of providing reliable backup and maintenance power to traditional large retail customers that utilize Qualifying Cogeneration Facilities at rates consistent with cost causation principles and FERC's rules for providing backup and maintenance service to Qualifying Facilities.
- PJM's proposal to limit legacy retail behind-the-meter generation treatment for Qualifying Facilities to those certified or self-certified as of December 18, 2025 falls short of being just and reasonable, and should be

modified to cover all Qualifying Facilities regardless of the date they entered service or the date of their certification or self-certification.

- PJM's proposed 50 MW cumulative nameplate capacity limit for continued retail behind-the-meter generation netting for non-Qualifying Facility generation is not just and reasonable because the limit is inappropriately applied to cumulative nameplate capacity rather than to the amount of retail load that can be netted, and 50 MW is too low given that the large computational load additions driving the Co-Located Loads issue are overwhelmingly 300 MW or larger in size; any limit should initially be set no lower than 200 MW (if not closer to 300 MW).

71. Further Affiant sayeth naught.


James R. Dauphinais

STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS) SS

Subscribed and sworn to before me this 16th day of March, 2026.




Notary Public

Qualifications of James R. Dauphinais

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A James R. Dauphinais. My business address is 16690 Swingley Ridge Road, Suite 140,
3 Chesterfield, MO 63017, USA.

4 **Q PLEASE STATE YOUR OCCUPATION.**

5 A I am a consultant in the field of public utility regulation and a Managing Principal with
6 the firm of Brubaker & Associates, Inc. (“BAI”), energy, economic and regulatory
7 consultants.

8 **Q PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
9 **EXPERIENCE.**

10 A I graduated from Hartford State Technical College in 1983 with an Associate's Degree
11 in Electrical Engineering Technology. Subsequent to graduation, I was employed by
12 the Transmission Planning Department of the Northeast Utilities Service Company¹ as
13 an Engineering Technician.

14 While employed as an Engineering Technician, I completed undergraduate
15 studies at the University of Hartford. I graduated in 1990 with a Bachelor's Degree in
16 Electrical Engineering. Subsequent to graduation, I was promoted to the position of
17 Associate Engineer. Between 1993 and 1994, I completed graduate level courses in the
18 study of power system analysis, power system transients and power system protection

¹In 2015, Northeast Utilities changed its name to Eversource Energy.

1 through the Engineering Outreach Program of the University of Idaho. By 1996 I had
2 been promoted to the position of Senior Engineer.

3 In the employment of the Northeast Utilities Service Company, I was
4 responsible for conducting thermal, voltage and stability analyses of the Northeast
5 Utilities' transmission system to support planning and operating decisions. This
6 involved the use of load flow, power system stability and production cost computer
7 simulations. It also involved examination of potential solutions to operational and
8 planning problems including, but not limited to, transmission line solutions and the
9 routes that might be utilized by such transmission line solutions. Among the most
10 notable achievements I had in this area include the solution of a transient stability
11 problem near Millstone Nuclear Power Station, and the solution of a small signal (or
12 dynamic) stability problem near Seabrook Nuclear Power Station. In 1993 I was
13 awarded the Chairman's Award, Northeast Utilities' highest employee award, for my
14 work involving stability analysis in the vicinity of Millstone Nuclear Power Station.

15 From 1990 to 1996, I represented Northeast Utilities on the New England Power
16 Pool Stability Task Force. I also represented Northeast Utilities on several other
17 technical working groups within the New England Power Pool ("NEPOOL") and the
18 Northeast Power Coordinating Council ("NPCC"), including the 1992-1996 New York-
19 New England Transmission Working Group, the Southeastern Massachusetts/Rhode
20 Island Transmission Working Group, the NPCC CPSS-2 Working Group on Extreme
21 Disturbances and the NPCC SS-38 Working Group on Interarea Dynamic Analysis.
22 This latter working group also included participation from a number of ECAR, PJM and
23 VACAR utilities.

1 From 1990 to 1995, I also acted as an internal consultant to the
2 Nuclear Electrical Engineering Department of Northeast Utilities. This included
3 interactions with the electrical engineering personnel of the Connecticut Yankee,
4 Millstone and Seabrook nuclear generation stations and inspectors from the Nuclear
5 Regulatory Commission (“NRC”).

6 In addition to my technical responsibilities, from 1995 to 1997, I was also
7 responsible for oversight of the day-to-day administration of Northeast Utilities' Open
8 Access Transmission Tariff. This included the creation of Northeast Utilities' pre-FERC
9 Order No. 889 transmission electronic bulletin board and the coordination of Northeast
10 Utilities' transmission tariff filings prior to and after the issuance of Federal Energy
11 Regulatory Commission (“FERC” or “Commission”) FERC Order No. 888. I was also
12 responsible for spearheading the implementation of Northeast Utilities' Open Access
13 Same-Time Information System and Northeast Utilities’ Standard of Conduct under
14 FERC Order No. 889. During this time, I represented Northeast Utilities on the Federal
15 Energy Regulatory Commission's "What" Working Group on Real-Time Information
16 Networks. Later I served as Vice Chairman of the NEPOOL OASIS Working Group
17 and Co-Chair of the Joint Transmission Services Information Network Functional
18 Process Committee. I also served for a brief time on the Electric Power Research
19 Institute facilitated "How" Working Group on OASIS and the North American Electric
20 Reliability Council facilitated Commercial Practices Working Group.

21 In 1997 I joined the firm of Brubaker & Associates, Inc. The firm includes
22 consultants with backgrounds in accounting, engineering, economics, mathematics,
23 computer science and business. Since my employment with the firm, I have filed or

1 presented testimony before the Federal Energy Regulatory Commission in Consumers
2 Energy Company, Docket No. OA96-77-000; Midwest Independent Transmission
3 System Operator, Inc., Docket No. ER98-1438-000; Montana Power Company, Docket
4 No. ER98-2382-000; Inquiry Concerning the Commission's Policy on Independent
5 System Operators, Docket No. PL98-5-003; SkyGen Energy LLC v. Southern Company
6 Services, Inc., Docket No. EL00-77-000; Alliance Companies, et al., Docket No. EL02-
7 65-000, et al.; Entergy Services, Inc., Docket No. ER01-2201-000; Remedying Undue
8 Discrimination through Open Access Transmission Service, Standard Electricity
9 Market Design, Docket No. RM01-12-000; Midwest Independent Transmission System
10 Operator, Inc., Docket No. ER10-1791-000; NorthWestern Corporation, Docket No.
11 ER10-1138-001, et al.; Illinois Industrial Energy Consumers v. Midcontinent
12 Independent System Operator, Inc., Docket No. EL15-82-000; Midcontinent
13 Independent System Operator, Inc., Docket No. ER16-833-000; Midcontinent
14 Independent System Operator, Inc., Docket No. ER17-284-000; and Midcontinent
15 Independent System Operator, Inc. and Ameren Services Company Docket No. ER18-
16 463-000. I have also filed or presented testimony before the Alberta Utilities
17 Commission, the California Public Utilities Commission, the Colorado Public Utilities
18 Commission, the Connecticut Department of Public Utility Control, the Florida Public
19 Service Commission, the Idaho Public Service Commission, the Illinois Commerce
20 Commission, the Indiana Utility Regulatory Commission, the Iowa Utilities Board, the
21 Kentucky Public Service Commission, the Louisiana Public Service Commission, the
22 Michigan Public Service Commission, the Missouri Public Service Commission, the
23 Montana Public Service Commission, the Nevada Public Utilities Commission, the New

1 Mexico Public Regulation Commission, the Council of the City of New Orleans, the
2 State of New York Public Service Commission, the Oklahoma Corporation
3 Commission, the Public Utility Commission of Texas, the Public Service Commission
4 of Utah, the Virginia State Corporation Commission, the Wisconsin Public Service
5 Commission, the Wyoming Public Service Commission, Federal District Court and
6 various committees of the Illinois, Missouri and South Carolina state legislatures. This
7 testimony has been given regarding a wide variety of issues including, but not limited
8 to, ancillary service rates, avoided cost calculations, certification of public convenience
9 and necessity, class cost of service, cost allocation, fuel adjustment clauses, fuel costs,
10 generation interconnection, interruptible rates, market power, market structure,
11 off-system sales, prudence, purchased power costs, resource adequacy, resource
12 planning, rate design, retail open access, standby rates, transmission losses, transmission
13 planning, transmission rates and transmission line routing.

14 I have also participated on behalf of clients in the Southwest Power Pool
15 Congestion Management System Working Group, the Alliance Market Development
16 Advisory Group and several committees and working groups of the Midcontinent
17 Independent System Operator, Inc. (“MISO”), including the Congestion Management
18 Working Group; Economic Planning Users Group; Loss of Load Expectation Working
19 Group; Market Subcommittee; Michigan Transmission Studies Task Force; Planning
20 Subcommittee; Regional Expansion, Criteria and Benefits Working Group; Resource
21 Adequacy Subcommittee (formerly the Supply Adequacy Working Group); and
22 Reliability Subcommittee. I am currently a member of the MISO Advisory Committee
23 in the end-use customer sector on behalf of industrial customer groups in Illinois,

1 Louisiana, Michigan and Texas. I am also the past Chairman of the Issues/Solutions
2 Subgroup of the MISO Revenue Sufficiency Guarantee (“RSG”) Task Force.

3 In 2009, I completed the University of Wisconsin-Madison High Voltage Direct
4 Current (“HVDC”) Transmission course for Planners that was sponsored by MISO. I
5 am a member of the Power and Energy Society (“PES”) of the Institute of Electrical and
6 Electronics Engineers (“IEEE”).

Analysis of MW Size of Consumers' Large Data Center Load Addition Inquiries

| | <u><100 MW</u> | <u>< 150 MW</u> | <u>< 200 MW</u> | <u>< 250 MW</u> | <u>< 300 MW</u> | <u>< 350 MW</u> | <u>< 400 MW</u> | <u>< 1,000 MW</u> | <u><= 1,200 MW</u> | <u>Unknown MW</u> |
|---------------------------|-------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|----------------------|-----------------------|-------------------|
| Total # of Load Inquiries | 2 | 5 | 5 | 7 | 8 | 16 | 16 | 26 | 32 | 6 |
| Total Amount of MW | 54 | 399 | 399 | 799 | 1,049 | 3,449 | 3,449 | 9,049 | 15,249 | |
| % of 15,249 MW | 0.35% | 2.62% | 2.62% | 5.24% | 6.88% | 22.62% | 22.62% | 59.34% | 100.00% | |
| % of 15,249 MW above | 99.65% | 97.38% | 97.38% | 94.76% | 93.12% | 77.38% | 77.38% | 40.66% | 0.00% | |

Source: Attachment to Consumers' Data Request Response U21859-DCC-CE-0045 (Exhibit No. IA-1, Attachment 3)

Question:

21859-DCC-CE-0013. Please refer to Connolly Direct at 4:7-8. "The Company has data center inquiries that total over 15 gigawatts of electric load in the economic development pipeline." Please provide a spreadsheet or other document listing each of the referenced "data center inquiries," and identify, for each inquiry: a) the proposed location; b) the associated electric load and/or contract capacity; and c) the timeline for energization and delivery of requested capacity, including any proposed load ramp.

Response:

See attached

Witness: Laura M. Connolly

Date: May 13, 2025

| Id | Location | Load (MW) | Requested in-service year | 50% of peak year | Peak demand reached year | Date of Inquiry | Description |
|-----------|----------------------|------------------|----------------------------------|-------------------------|---------------------------------|------------------------|--------------------|
| A | East Central Region | 400 | As soon as possible | Unknown | Unknown | 10/7/2024 | Data Center |
| B | South Central Region | 1,000 | Q1 2026 | Q2 2033 | Q1 2040 | 10/4/2024 | Data Center |
| C | Unknown | 300 | Unknown | Unknown | Unknown | 11/6/2024 | Data Center |
| D | East Central Region | 300 | As soon as possible | Unknown | Unknown | 7/15/2024 | Data Center |
| E | Unknown | 200 | As soon as possible | Unknown | Within 36 months | 5/7/2024 | Data Center |
| F | Southwest Region | Unknown | Unknown | Unknown | Unknown | 12/3/2024 | Data Center |
| G | Unknown | 200 | Unknown | Unknown | Unknown | 11/19/2024 | Data Center |
| H | Unknown | 250 | As soon as possible | Unknown | Unknown | 3/10/2025 | Data Center |
| I | East Central Region | 1,000 | As soon as possible | Unknown | Within 36 months | 2/26/2025 | Data Center |
| J | West Region | 300 | Q1 2029 | Q4 2030 | Q4 2033 | 3/1/2024 | Data Center |
| K | Unknown | 300 | Q4 2029 | Q2 2030 | Q4 2033 | 6/6/2024 | Data Center |
| L | East Region | 100 | Unknown | Unknown | Unknown | 1/9/2025 | Data Center |
| M | Unknown | 300 | Unknown | Unknown | Q1 2030 | 12/4/2024 | Data Center |
| N | East Region | 700 | Unknown | Unknown | Unknown | 2/4/2025 | Data Center |
| O | Unknown | 1,000 | Within 2-3 years | Unknown | Within 5-10 years | 2/28/2025 | Data Center |
| P | East Central Region | 300 | Unknown | Unknown | Unknown | 3/10/2025 | Data Center |
| Q | Unknown | Unknown | Unknown | Unknown | Unknown | 7/29/2024 | Data Center |
| R | Unknown | 500 | Unknown | Unknown | Unknown | 8/7/2024 | Data Center |
| S | South Central Region | 100 | Unknown | Unknown | Unknown | 10/4/2024 | Data Center |
| T | Unknown | Unknown | Q1 2027 | Unknown | Q1 2031 | 10/31/2024 | Data Center |
| U | Southwest Region | 50 | Unknown | Unknown | Unknown | 12/19/2024 | Data Center |
| V | Unknown | 1,200 | Q1 2028 | Q2 2029 | Q4 2030 | 10/16/2024 | Data Center |
| W | Unknown | 300 | Unknown | Unknown | Unknown | 8/19/2024 | Data Center |

| Id | Location | Load (MW) | Requested in-service year | 50% of peak year | Peak demand reached year | Date of Inquiry | Description |
|-----------|----------------------|------------------|----------------------------------|-------------------------|---------------------------------|------------------------|--------------------|
| X | Southwest Region | 4 | 2024 | 2024 | 2024 | 7/25/2024 | Data Center |
| Y | Unknown | 300 | Unknown | Unknown | Unknown | 1/15/2025 | Data Center |
| Z | Unknown | Unknown | Unknown | Unknown | Unknown | 10/31/2024 | Data Center |
| AA | Unknown | 500 | Unknown | Unknown | Unknown | 9/10/2024 | Data Center |
| AB | Unknown | 1,000 | Q1 2029 | Unknown | Unknown | 10/31/2024 | Data Center |
| AC | Unknown | 500 | Q1 2026 | Unknown | Q1 2029 | 7/12/2024 | Data Center |
| AD | Unknown | Unknown | Unknown | Unknown | Unknown | 10/29/2024 | Data Center |
| AE | Unknown | 500 | Q3 2026 | Q3 2027 | Q3 2029 | 7/25/2024 | Data Center |
| AF | Unknown | 500 | Unknown | Unknown | Unknown | 10/10/2024 | Data Center |
| AG | Unknown | 600 | Q4 2027 | Unknown | 2030 | 12/11/2024 | Data Center |
| AH | Unknown | 145 | Unknown | Unknown | Unknown | 7/31/2024 | Data Center |
| AI | Unknown | 1,000 | 2027 | Unknown | Unknown | 2/4/2025 | Data Center |
| AJ | Southeasterly Region | 500 | Unknown | Unknown | Q1 2029 | 1/6/2025 | Data Center |
| AK | Unknown | 900 | Q4 2027 | Q4 2028 | Q4 2029 | 9/11/2024 | Data Center |
| AL | East Central | Unknown | Unknown | Unknown | Unknown | 11/21/2024 | Data Center |

ICC Docket Nos. 25-0677 & 25-0679 (Cons.)

**Commonwealth Edison Company's Response to
NRG Energy, Inc. ("NRG") Information Requests
NRG-ComEd 1.01-NRG-ComEd 1.20
Date Received: August 22, 2025
Date Served: August 29, 2025**

REQUEST NO. NRG-ComEd 1.02:

Please provide all workpapers, analyses, data, and information used or relied upon by Max Leichtman in relation to ComEd Ex. 1.0, the Direct Testimony of Max Leichtman.

RESPONSE:

ComEd objects to this request as overly broad and unduly burdensome to the extent it seeks "all ... data and information ... relied upon" by ComEd witness Leichtman, and to the extent that much of the "data and information" is not relevant and not calculated to lead to the discovery of relevant and admissible evidence. Subject to and without waiving those objections, ComEd responds as follows:

See NRG-ComEd 1.02_Attach 1 for the data supporting Figure 1 in the direct testimony of Max Leichtman (ComEd Ex. 1.0) at lines 122-123. There are no other workpapers supporting Mr. Leichtman's testimony.

ICC Dkt Nos. 25-0677 / 25-0679 (Cons.)
NRG-ComEd 1.02_Attach 1
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| Year | New/Expansion | ComEd New |
|-------------------|---------------|---------------|
| | | Ultimate |
| 2018 | New | 2.000 |
| 2018 | New | 14.000 |
| 2018 | New | 22.000 |
| 2018 | New | 24.000 |
| 2018 | New | 4.000 |
| 2018 | Expansion | 24.000 |
| 2018 | New | 3.500 |
| 2018 Total | | 93.500 |
| 2019 | New | 4.100 |
| 2019 | New | 4.050 |
| 2019 | Expansion | 3.000 |
| 2019 | Expansion | 4.100 |
| 2019 | Expansion | 12.310 |
| 2019 | Expansion | 2.700 |
| 2019 | New | 5.370 |
| 2019 | Expansion | 1.200 |
| 2019 | New | 5.000 |
| 2019 | New | 37.787 |
| 2019 Total | | 79.617 |
| 2020 | New | 13.70 |
| 2020 | New | 0.10 |
| 2020 | New | 2.00 |
| 2020 | New | 71.80 |
| 2020 | New | 68.30 |
| 2020 | New | 48.00 |
| 2020 | New | 28.98 |
| 2020 | New | 16.00 |
| 2020 | Expansion | 5.00 |
| 2020 | New | 5.30 |
| 2020 | New | 4.00 |
| 2020 | New | 1.25 |
| 2020 | New | 12.29 |
| 2020 | New | 5.80 |
| 2020 | New | 11.25 |
| 2020 | New | 15.70 |
| 2020 | New | 7.70 |
| 2020 | New | 208.00 |
| 2020 Total | | 525.16 |
| 2021 | New | 108.00 |
| 2021 | New | 4.00 |

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| | | |
|-------------------|---------------|---------------|
| 2021 | New | 250.00 |
| 2021 | Expansion | 10.00 |
| 2021 | New | 34.00 |
| 2021 | New | 3.00 |
| 2021 | New | 2.10 |
| 2021 | New/Expansion | 4.00 |
| 2021 | New | 24.00 |
| 2021 | New | 10.00 |
| 2021 | New | 24.00 |
| 2021 | New | 1.00 |
| 2021 | New | 6.50 |
| 2021 | New | 5.20 |
| 2021 | New | 8.00 |
| 2021 | New | 5.00 |
| 2021 Total | | 498.80 |
| 2022 | New | 24.00 |
| 2022 | New | 5.00 |
| 2022 | New | 120.00 |
| 2022 | New | 250.00 |
| 2022 | Expansion | 135.00 |
| 2022 | New | 2.00 |
| 2022 | Expansion | 92.00 |
| 2022 | New | 5.00 |
| 2022 | New | 3.00 |
| 2022 | New | 8.00 |
| 2022 | New | 2.00 |
| 2022 | New | 5.50 |
| 2022 Total | | 651.50 |
| 2023 | New | 612.00 |
| 2023 | New | 288.00 |
| 2023 | New | 378.00 |
| 2023 | New | 325.00 |
| 2023 | New | 7.00 |
| 2023 | Expansion | 24.00 |
| 2023 | Expansion | 12.00 |
| 2023 | Expansion | 11.00 |
| 2023 | New | 250.00 |
| 2023 | New | 135.00 |
| 2023 | New | 6.50 |
| 2023 | New | 110.00 |
| 2023 | New | 2.00 |
| 2023 | New | 12.00 |

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NRG-ComEd 1.02_Attach 1
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| | | |
|--------------------|------------|-----------------|
| 2023 | New | 49.00 |
| 2023 Total | | 2221.50 |
| 2024 | New | 16.00 |
| 2024 | New | 1500.00 |
| 2024 | New | 45.00 |
| 2024 | New | 94.00 |
| 2024 | New | 587.00 |
| 2024 | New | 480.00 |
| 2024 | New | 350.00 |
| 2024 | New | 600.00 |
| 2024 | Expansion | 20.00 |
| 2024 | Expansion | 40.00 |
| 2024 | Expansion | 60.00 |
| 2024 | New | 10.00 |
| 2024 | Expansion | 25.00 |
| 2024 | New | 50.00 |
| 2024 | New | 54.00 |
| 2024 Total | | 3931.00 |
| 2025 | New | 600.00 |
| 2025 | New | 505.00 |
| 2025 | Attraction | 300.00 |
| 2025 | Attraction | 860.00 |
| 2025 | Attraction | 1000.00 |
| 2025 | Attraction | 750.00 |
| 2025 | Attraction | 1296.00 |
| 2025 | Attraction | 600.00 |
| 2025 | Expansion | 1870.00 |
| 2025 | Attraction | 431.00 |
| 2025 | Attraction | 54.00 |
| 2025 | Attraction | 41.00 |
| 2025 Total | | 8307.00 |
| Grand Total | | 16308.08 |