

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

PJM Interconnection, L.L.C., <i>et al.</i>	)	Docket Nos. EL25-49-002
	)	EL25-49-000
	)	
Large Loads Co-Located at Generating Facilities	)	AD24-11-001
	)	
Constellation Energy, LLC	)	
v.	)	EL25-20-001
PJM Interconnection, L.L.C.	)	(Consolidated)
	)	
PJM Interconnection, L.L.C.	)	ER26-1479-000

**REQUEST FOR REHEARING AND CLARIFICATION
OF THE INDUSTRIAL CUSTOMERS/AMTRAK**

Pursuant to Rule 713 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure,¹ the PJM Industrial Customer Coalition (“PJMICC”), the Industrial Energy Consumers of America (“IECA”), the American Forest and Paper Association (“AF&PA”) (collectively, “Industrials”), and the National Railroad Passenger Corporation (“Amtrak”) respectfully request rehearing and clarification of portions of the Commission’s June 18, 2026, Order on Rehearing, Clarification, Compliance Filing, and Paper Hearing (“June Order”) in the above referenced proceeding.² The Industrials/Amtrak respectfully ask the Commission to 1) establish a retail Behind the Meter Generation (“BTMG”) netting threshold of 200 Megawatts (“MW”); and 2) grant their rehearing requests regarding Qualifying Facilities (“QFs”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”), including a QF’s right to be served with just and reasonable back-up and maintenance power.

¹ See 18 C.F.R. § 385.713.

² 195 FERC ¶ 61,209 (Order entered Jun. 18, 2026) (hereinafter “June Order”).

I. INTRODUCTION

On December 18, 2025, the Commission issued an order in the above-referenced proceeding (“December Order”) finding that the Open Access Transmission Tariff (“Tariff”) of PJM Interconnection, L.L.C. (“PJM”) is unjust and unreasonable due to the failure to address the rates, terms, and conditions of service with sufficient clarity or consistency that apply to generators serving Co-Located Load and Eligible Customers taking transmission service on behalf of Co-Located Load.³ The December Order provided PJM with guidance to address co-located electrical configurations involving both generation and load behind a retail customer’s meter and also directed PJM to make a compliance filing (“PJM Compliance Filing”)⁴ to implement the Commission’s finding that retail BTMG rules in the PJM Tariff are no longer just and reasonable.

On January 20, 2026, PJMICC and IECA filed a rehearing/clarification request of the December Order (“Industrials’ Rehearing Request”), expressing appreciation for the Commission’s efforts to address resource adequacy in PJM through directing new transmission services that intended to offer potential additional flexibility, clarity, and choice for consumers, but cautioning the Commission as to its finding with respect to the existing BTMG rules.⁵ Specifically, the Industrials’ Rehearing Request explained that the December Order’s application of the BTMG finding to traditional manufacturers and institutional customers was unfounded, unsubstantiated, contrary to longstanding rules and policies, inconsistent with cost causation principles, and, with respect to retail BTMG that are cogeneration facilities, contrary to treatment

³ *PJM Interconnection, L.L.C.*, 193 FERC ¶ 61,217, at P 2 (2025) (hereinafter “December Order”).

⁴ *PJM Interconnection, L.L.C.*, 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., (“PJM Compliance Filing”) Docket No. ER26-1479-000, at 10 (Feb. 23, 2026).

⁵ See generally Industrials’ Rehearing Request, FERC Docket No. EL25-49-000 *et al.* (filed Jan. 20, 2026).

of cogeneration QFs under PURPA.⁶ PJMICC and IECA highlighted the December Order’s unnecessary infliction of harm to manufacturing customers with BTMG, to the grid, and to the available pool of generation resources to serve the grid at a time of growing resource inadequacy.⁷

On March 16, 2026, the Industrials and Amtrak filed a protest to PJM’s Compliance Filing in Docket No. ER26-1479, along with a supporting technical affidavit of James R. Dauphinais (“Dauphinais Affidavit”), challenging the proposed retail BTMG netting threshold of 50 MW, explaining the unintended and adverse consequences of applying BTMG rule changes to traditional large load customers that neither caused the problems facing the grid today nor present the same reliability risks and speed-to-power demands of certain significantly larger computational loads.⁸ The Industrials/Amtrak substantiated a BTMG threshold of at least 200 MW, and Mr. Dauphinais explained in detail why very large computational loads are differently situated than traditional commercial and industrial customers using BTMG.⁹ Mr. Dauphinais further demonstrated why PURPA QFs should be eligible for retail netting for their full load and emphasized that the FERC’s longstanding regulations governing rates for sales of back-up power or maintenance power to QFs must not be ignored, given that transmission is a key component of back-up maintenance power.¹⁰ Mr. Dauphinais also highlighted evidence in a regulatory proceeding in Michigan supporting a determination of defining large load at a 300 MW threshold.¹¹

⁶ Public Utility Regulatory Policies Act, Pub. L. 95–617, title II, § 210, Nov. 9, 1978, as amended (codified at 16 U.S.C § 824a-3).

⁷ Industrials’ Rehearing Request at 1-2 (the December Order “threatens to weaken some of the largest manufacturers in the PJM region” by rendering hundreds of megawatts of existing retail BTMG uneconomic and stalling new projects).

⁸ Joint Protest and Comments of Industrial Customer Organizations and Amtrak, *PJM Interconnection, L.L.C.*, Docket No. ER26-1479-000 at 5-15 (filed Mar. 16, 2026) (hereinafter “Industrial/Amtrak Compliance Protest”).

⁹ Industrial/Amtrak Compliance Protest, Dauphinais Affidavit at 4-5, 12-13, 29-37.

¹⁰ Dauphinais Affidavit at 8-11, 26-29.

¹¹ *Id.* at 34, 38, Attachment 2 and Attachment 3 (showing that data centers are typically at 300 MW and above).

Given the deleterious impact of FERC's recent shift in BTMG netting policy on manufacturers, institutional, and transportation customers, on April 13, 2026, PJMICC, IECA, and Amtrak filed a Petition for Review of the December Order with the Third Circuit Court of Appeals.¹²

To be clear, the Industrials/Amtrak value the Commission's efforts in the June Order to protect existing manufacturing customers through the implementation of grandfathering provisions and exemptions for certain cogeneration facilities. During the June 18, 2026 Open Meeting, the Commission explained the June Order's modifications to the December Order, and it was stated that "this Commission wants to safeguard American Industrials."¹³ Industrials appreciate the Commission's recognition of the importance of the manufacturing sector, which provides critical supply chain inputs for industries nationwide, including for the energy industry and national defense.

Unfortunately, the June Order presents concrete, practical implementation difficulties that may challenge the Commission's intent to safeguard American manufacturing.¹⁴ The June Order does not fully protect all existing customers and investment-backed expectations in manufacturing

¹² See *PJM Industrial Customer Coalition et al v. FERC*, Case No. 26-1840 (3rd Cir.) (filed Apr. 13, 2026).

¹³ See June 18, 2026, Open Meeting at 11:43-12:41, available at <https://www.ferc.gov/news-events/events/june-18-2026-open-meeting-10082025> (last accessed July 20, 2026).

¹⁴ The June Order rejected and dismissed most of the Industrials' arguments. See, e.g., June Order at PP 43 (disagreeing with Industrial BTMG jurisdictional arguments), 73-77 ("We disagree with Industrials that changes to retail BTMG netting rules are beyond the scope of this proceeding"), 81 ("We disagree with Industrials that the Commission failed to address prior precedent"), 82 ("We also disagree with Industrials that the Commission did not develop a sufficient record"), 83 (dismissing Industrials' cost causation argument as "unpersuasive"), 87 ("We also disagree with Industrials that the December Order unduly discriminates against Network Customers who manage costs by investing in generation as compared to Network Customers who manage costs by managing load"), 141 (rejecting Industrials' argument that the Commission's reliability concerns should not apply to cogeneration QFs categorically), 145 (denying Industrials clarification request that BTMG netting rules do not apply to capacity obligations), 148-149 (dismissing unlawful taking argument due to lack of finality), 153-154 ("we dismiss Industrials' argument that any retail BTMG materiality threshold implemented will be insufficiently high for lack of finality"), 207-220 (implicitly denying Industrials' requesting 200 MW retail threshold by setting a 50 MW retail threshold for BTMG netting), 245 and 410-411 (declining to consider Industrials' arguments around back-up and maintenance service for QFs).

resources, especially given that the June Order places the burden on non-jurisdictional retail industrial customers to navigate a PJM compliance process¹⁵ to show that “they are not the problem.” To claim a narrow exemption, the June Order requires manufacturers to demonstrate – potentially by hiring an outside consultant to conduct power flow studies – that they are not the cause of the resource adequacy, reliability, and cost shift pressures facing the grid.¹⁶ The June Order also requires customers to navigate a yet-to-be-defined process to maintain grandfathering status (assuming they qualify). Manufacturers are already operating on thin margins, with energy managers wearing multiple hats. The Industrials/Amtrak respectfully ask the Commission to help manufacturers avoid unnecessary red tape, cost increases, and business uncertainty by granting the requested 200 MW threshold for BTMG netting.

The Commission’s new transmission services are innovative and creative and will help to address several co-location and load growth challenges facing the industry. However, as a practical matter, taking the new Firm Contract Demand (“FCD”) and Non-Firm Contract Demand (“NFCD”) transmission services is unlikely to be a viable, economic, and reliable option for all manufacturers and traditional industrial customers. Moreover, the June Order will hurt American manufacturing and disincentivize meaningful, on-site generation investments that could otherwise help to ameliorate the resource adequacy situation confronting PJM today and in the future. To

¹⁵ See June Order at P 86 (“To the extent that any of the facilities discussed in Industrials’ six examples could demonstrate that they do not present such concerns, they may fall within the exemption that we direct PJM to submit as part of the compliance filing”).

¹⁶ June Order at P 246 (“certain cogeneration QFs should be exempted from the replacement rate upon a demonstration that they do not present the reliability or resource adequacy concerns discussed in the December Order”); *see also id.* at P 142.

avoid unnecessary economic harm to manufacturers in PJM¹⁷ and to support manufacturers' onshoring efforts,¹⁸ the Commission should grant rehearing on the issues raised herein.

II. BACKGROUND ON INDUSTRIALS AND AMTRAK

The Industrials include associations of leading American manufacturing companies, trade-exposed electricity users, institutional users, and other energy-intensive customers, including hospitals, universities, and educational institutions. Together, the Industrials represent organizations producing well over \$1 trillion in sales, including thousands of manufacturing facilities and millions of family-sustaining jobs in the United States. These organizations produce the raw materials and inputs necessary to sustain commerce and our overall standard of living. Manufacturing employs over 15 million people in the United States¹⁹ 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).²⁰ 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, industrial demand has been relatively flat and for manufacturers

¹⁷ See "Big Tech data centers are driving up power bills at America's Rust Belt factories," Reuters (Laila Kearney) (July 7, 2026), available at <https://www.reuters.com/business/energy/big-tech-data-centers-are-driving-up-power-bills-americas-rust-belt-factories-2026-07-07/> (last accessed July 20, 2026).

¹⁸ See "Data centers' energy demand threatens Trump's 'Made in America' plan," Ars Technica (Jeremy Hsu) (July 7, 2026), available at <https://arstechnica.com/tech-policy/2026/07/us-manufacturers-energy-costs-soar-because-of-ai-data-center-demand/> (last accessed July 20, 2026).

¹⁹ See U.S. Bureau of Labor Statistics (2024 data), available at <https://www.bls.gov/cps/cpsaat18.htm> (last accessed July 14, 2026).

²⁰ See U.S. Manufacturing Economy, NIST, available at <https://www.nist.gov/el/applied-economics-office/manufacturing/manufacturing-economy/total-us-manufacturing> (last accessed July 20, 2026).

positioned to expand facilities, expansion occurs carefully and deliberately over the long-term, with years of planning and investment prior to committing to a facility addition or expansion. Many of the Industrials' members have constructed, maintained, and operated substantial BTMG units designed for operational efficiency and deeply integrated into their industrial processes. Industrials' members span industries as diverse as chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceuticals, building products, automotive, transportation, independent oil refining, cement, and more. Industrials also comprise other institutional and service customers, such as universities and hospitals, some of which also operate retail BTMG.

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 in 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.

III. RESERVATION OF APPELLATE RIGHTS

Pursuant to Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713, and Section 313(b) of the Federal Power Act, 16 U.S. Code § 825l, the Industrials previously filed a request for rehearing of the December Order, followed by a petition for review with the Third Circuit Court of Appeals ("Third Circuit Petition"). The Industrials/Amtrak expressly reserve their right to continue to litigate, as necessary, the issues delineated in their Third

Circuit Petition.²¹ This second rehearing request seeks to only address issues that were not finalized in the December Order and only recently finalized in the June Order. Accordingly, any decision not to re-litigate or re-challenge issues that are already pending before the Third Circuit shall not constitute waiver or failure to exhaust administrative remedies. In the June Order, FERC treated portions of the December Order as constituting final determinations, such as the general finding on the unjustness and unreasonableness of retail BTMG netting,²² while treating other portions of the December Order as not final, such as the yet-to-be-determined threshold for netting arrangements on a going-forward basis²³ and arrangements for new transmission services.²⁴

A second rehearing request is only necessary if FERC’s first order on rehearing “modified the results of [the FERC’s initial December Order] in a significant way.”²⁵ Such a “significant” modification means a change in the outcome of the case, not merely a change in the Commission’s reasoning.²⁶ The June Order did not necessarily modify the December Order in a significant way, but the June Order did provide several substantive clarifications that materially impact the rights and opportunities of affected customers, and the June Order did, for the first time, address the specific numerical threshold for retail netting and issues pertaining to PURPA, QFs, and cogeneration. The Industrials/Amtrak focus this rehearing request on the June Order’s newly addressed issues while preserving, as necessary, the remaining unresolved issues raised in their Third Circuit Petition that were not granted in the June Order. In recognition of the need for

²¹ See *PJM Industrial Customer Coalition et al. v. FERC*, Concise Summary of the Case, Case No. 26-1840 (filed Apr. 16, 2026).

²² See June Order at PP 3, 78, 81.

²³ See *id.* at P 153.

²⁴ See *id.* at P 106.

²⁵ See *Smith Lake Improvement and Stakeholders Ass’n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015) (quoting *Town of Norwood, Mass. v. FERC*, 906 F.2d 772, 775 (D.C. Cir. 1990)).

²⁶ *Smith Lake*, 809 F.3d at 56 (citing *Allegheny Power v. FERC*, 437 F.3d 1215, 1222 (D.C. Cir. 2006)).

regulatory certainty and legal durability for affected businesses, stakeholders, and regulators, the Industrials/Amtrak are also filing this rehearing/clarification request to avoid the need for appellate litigation.

IV. REQUEST FOR REHEARING

A. STATEMENT OF ISSUES/SPECIFICATION OF ERRORS

Pursuant to Rule 713(c),²⁷ the Industrials/Amtrak respectfully submit that certain of the June Order's determinations with respect to PJM's retail BMTG rules are arbitrary and capricious, do not reflect reasoned decision-making, are insufficiently supported, and result in a rate outcome that is unjust, unreasonable, unduly discriminatory, and preferential. Due to the specific errors identified herein and the lack of a record upon which to base these determinations, the June Order should be modified on rehearing if any of the Clarifications requested herein are not granted.

The Industrials/Amtrak respectfully specify the following errors:

1. The June Order failed to engage with the evidence and arguments presented by the Industrials/Amtrak that provided reasons a 200 MW or greater materiality threshold ("Retail Threshold") for Network Integration Transmission Service ("NITS") netting rules is preferable to a 50 MW Retail Threshold. *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520 (D.C. Cir. 2010); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
2. While the June Order approved a narrow exemption for certain cogeneration QFs, the exemption is unduly narrow because it does not clearly allow QFs with low reliability and system risks or strong performance histories to also be exempt from the new netting rules, consistent with cost causation principles and the Commission's QF Back-up Regulations. The June Order errs because it does not reflect reasoned decision-making regarding PURPA regulations requiring back-up service with specified assumptions, resulting in an error of law that deemed back-up service as unrelated to transmission service. 16 U.S.C. § 824d, 16 U.S.C. § 825l(b); *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014); *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520 (D.C. Cir. 2010); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983);

²⁷ 18 C.F.R. § 385.713(c).

New Eng. Power Generators Ass’n v. FERC, 881 F.3d 202 (D.C. Cir. 2018); *ExxonMobil Oil v. FERC*, 487 F.3d 945 (D.C. Cir. 2007); *New York v. FERC*, 535 U.S. 1 (2002); *Transmission Access Policy Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000); *North Carolina Util. Comm’n v. FERC*, 42 F.3d 659 (D.C. Cir. 1994); *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014); *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254 (D.C. Cir. 2018); *El Paso Elec. Co. v. FERC*, 76 F.4th 352 (5th Cir. 2023); *BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264 (D.C. Cir. 2014); *K N Energy, Inc. v. FERC*, 968 F.2d 1295 (D.C. Cir. 1992); *Natl’ Ass’n of Regulatory Util. Commis. v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

3. The June Order’s dismissal of the Industrials’ unlawful regulatory takings argument on the grounds of “lack of finality” is arbitrary and capricious and inconsistent with governing appellate precedent. U.S. Const. amend. V.; *Lingle v. Chevron U.S.A.*, 544 U.S. 528 (2005); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *Penn Central Trans. v. New York City*, 438 U.S. 104 (1978).

B. ARGUMENT

In the December Order and June Order, the Commission cites changing circumstances on the transmission grid regarding reliability and resource adequacy risks as the underpinning reason that BTMG rules must change.²⁸ The expansive growth of super-sized computational load has driven the need to ensure transmission services remain just and reasonable, and the Industrials/Amtrak do not oppose the Commission’s primary reforms and policy objectives. However, the Industrials/Amtrak request rehearing on particular determinations in the June Order that run crosswise with cost-causation principles, for which the Commission did not provide a reasoned explanation or engage with Industrials’/Amtrak’s underlying arguments. To allow American industry to thrive and grow in PJM, these critical flaws in the June Order must be addressed.

Courts have consistently affirmed the Commission’s responsibility to substantiate its decisions with reasoned, principled decision-making when determining just and reasonable rates.

²⁸ See June Order at P 149 (citing December Order at P 186).

The D.C. Circuit Court of Appeals has held that the FERC must “adequately explain how the evidence it relied on supported the conclusion it reached.”²⁹ The Commission does not meet its statutory obligation under the Administrative Procedure Act (“APA”) when it does not adequately explain its rationale for its rate-setting decisions.³⁰ A Commission order will be reversed on review if it is arbitrary or capricious, reflects an abuse of discretion, is not otherwise in accordance with law, or is not supported by substantial evidence.³¹ To avoid an arbitrary and capricious decision or one that does not reflect reasoned decision-making, the Commission must consider all important aspects of the problem at issue.³² It is “well established that the Commission must ‘respond meaningfully to the arguments raised before it.’”³³ To satisfy its obligation to engage in reasoned decision-making, the Commission must examine the relevant data and articulate a rational connection between the facts found and the choices made.³⁴ The Commission must reach its

²⁹ *Emera Maine v. FERC*, 854 F.3d 9, 28 (D.C. Cir. 2017) (citing *Wis. Gas Co. v. FERC*, 770 F.2d 1144, 1156 (D.C. Cir. 1985)). The Commission’s broad mandate to set just and reasonable rates under the Federal Power Act does not relieve the FERC of the requirement to engage in reasoned decision-making. *New England Power Generators Ass’n, Inc. v. FERC*, 881 F.3d 202, 210 (D.C. Cir. 2018). While the FERC’s determinations regarding technical issues are entitled to deference, deference is not owed if the FERC “has not substantiated the application of its policy, either through the development of specific facts or by making a reasoned explanation.” *El Paso Elec.*, 832 F.3d 495, 503 (5th Cir. 2016) (quoting *Fla. Gas Transmission Co. v. FERC*, 876 F.2d 42, 45 (5th Cir. 1989)).

³⁰ See *Missouri Public Service Com’n v. FERC*, 234 F.3d 36, 40 (D.C. Cir. 2000) (reasoned and principled decision-making is essential). This comports with the design of the FPA, where Commissioners are directed to give their reasoning even where the Commission cannot come to a decision due to a tie vote. 16 U.S. Code § 824d(g)(1).

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

³² See, e.g., *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43 (1983) (“an agency rule would be arbitrary and capricious if the agency . . . failed to consider an important aspect of the problem”); *NorAm Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1998) (“In previous cases, we have rejected agency orders when the Commission neglected to deal with an important part of the problem...”); (citing *Laclede Gas Co. v. FERC*, 997 F.2d 936, 945-48 (D.C. Cir. 1993)); *North Carolina Util. Comm’n v. FERC*, 42 F.3d 659, 666 (D.C. Cir. 1994) (given the complexity of the issue, the FERC must more fully explain its decision).

³³ *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1, 12 (D.C. Cir. 2015).

³⁴ *Sacramento*, 616 F.3d at 528; *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

conclusion through decision-making that is “reasoned, principled, and based upon the record.”³⁵ If the Commission “does not provide a rational explanation for its action based on relevant data, then that action is arbitrary and capricious.”³⁶

The Industrials/Amtrak raise three discrete BTMG-related issues on rehearing. First, while the 50 MW Retail Threshold approved by the Commission provides relief to smaller facilities (with presumptively lower grid impact) that may help mitigate some negative effects of the June Order, the June Order neglected to meaningfully engage with substantive arguments for a threshold of at least 200 MW for retail BTMG netting—in particular, the advantages of a 200 MW or greater threshold over a 50 MW threshold. Importantly, a threshold of at least 200 MW for retail BTMG netting would allow FERC to focus on the impacts of new, super-sized load entrants (the prime cause of the resource adequacy and reliability constraints facing the grid) while retaining the effective and efficient structure that has fostered investment by industrial and institutional customers and encouraged efficient use of the grid.

Second, the June Order granted a narrow exemption for certain QFs that have minimal use of the transmission system due to the configurations of their systems, whereby certain amounts of load are reduced if on-site generation were to trip off.³⁷ While this exemption is appreciated and consistent with cost causation, it is unduly narrow. The June Order clarified that all customers are qualified for up to 50 MW of netting regardless of their size. However, for QFs that exceed 50

³⁵ *New Eng. Power Generators Ass’n v. FERC*, 881 F.3d 202, 210-11 (D.C. Cir. 2018); *West Deptford Energy, LLC*, 766 F.3d 10, 20 (D.C. Cir. 2014); *ExxonMobil Oil v. FERC*, 487 F.3d 945, 953 (D.C. Cir. 2007); see *New York v. FERC*, 535 U.S. 1, 36 (2002); see also *Transmission Access Policy Group v. FERC*, 225 F.3d 667, 705, 716 (D.C. Cir. 2000) (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1021 (D.C. Cir. 1987)); *Colo. Interstate Gas Co. v. FERC*, 146 F.3d 889, 893 (D.C. Cir. 1998).

³⁶ *La. PSC. V. FERC*, 20 F.4th 1, 6-7 (D.C. Cir. 2021) (citing 5 U.S.C. § 706(2)(A) and *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43)).

³⁷ June Order at P 142.

MW of BTMG and do not qualify for grandfathering, the June Order fails to provide a pathway to demonstrate that systems are designed and maintained for minimal grid use. Even if a retail customer with a QF has 20 years of never coming online during a system peak, that customer is now required under the December Order and June Order to pay transmission and capacity charges based on a simple, theoretical “possible” use of the system. Relatedly, the June Order also did not meaningfully address its legal requirements that mandate certain assumptions for back-up service to QFs under PURPA, as set forth in 18 C.F.R. § 292.305 (“QF Back-up Regulations”). The Commission defers the Industrials/Amtrak’s arguments on this topic by asserting that the December Order’s directive “has no bearing on the rates at which a host utility provides backup service to QFs.”³⁸ However, this explanation in the June Order does not grapple with the regulatory text, the purpose of PURPA, or the practical realities of how back-up service is priced and paid. This is not only a legal error, but an economically damaging error for the future of American manufacturing in the PJM region. The FERC should broaden its exemption to allow all QFs to continue to qualify for existing BTMG netting rules.

Finally, the Industrials/Amtrak seek rehearing and clarification regarding the June Order’s determination that an unlawful takings claim is not yet ripe due to lack of finality. If the Commission were to continue to disagree with the rationale behind the regulatory takings claim, Industrials/Amtrak ask the Commission to clarify and confirm when agency action is final so that injured retail customers may timely seek redress for harms inflicted by FERC’s orders.

In summary, granting this rehearing request in full would avoid discouraging future investment in America’s manufacturing and institutional sectors in PJM. While the grandfathering provisions are appreciated by existing customers, even those who appear to qualify for

³⁸ June 2026 Order at P 245.

grandfathering must, under the June Order, take great care to preserve that grandfathering to avoid adverse economic changes to their facilities. The Industrials/Amtrak respectfully request that the Commission adopt a 200 MW Retail Threshold and a broad exemption for QFs to preserve the investment environment in American manufacturing in the PJM region, consistent with cost causation principles and Commission Regulations.

1. The June Order failed to engage with the evidence and arguments presented by the Industrials/Amtrak that provided reasons a 200 MW or greater materiality threshold for NITS netting rules is preferable to a 50 MW Retail Threshold.

In its December Order, FERC directed PJM to propose a materiality threshold, below which retail BTMG netting rules will continue in effect. PJM proposed a 50 MW Retail Threshold based on generator size, with an alternative 200 MW Retail Threshold as an interim solution if FERC did not adopt PJM's legacy treatment for existing on-site generation above 50 MW.³⁹ The Industrials/Amtrak supported a proposal for at least a 200 MW Retail Threshold to appropriately weigh the cost-causation balance of use of the system by "smaller" large load vs. the risks of super-sized load coming online. The Industrials/Amtrak argued that a threshold of at least 200 MW would, as a practical matter, avoid making retail customers' resource adequacy contributions uneconomic while still addressing the challenge of massive new loads entering the system.

In the June Order, the Commission selected a 50 MW Retail Threshold, determining that "50 MW strikes a reasonable balance between a lower threshold, which may restrict netting more

³⁹ PJM stated in its Compliance Filing 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." PJM Compliance Filing at 15.

than necessary to respond to resource adequacy concerns, and a higher threshold, which would fail to address the resource adequacy concerns identified in the December Order.”⁴⁰

The Industrials/Amtrak request rehearing on the Retail Threshold issue because the Commission did not engage on most of the arguments for why PJM’s alternative proposal of 200 MW is superior to the main proposal of 50 MW. The June Order addressed economic harm to existing BTMG arrangements through grandfathering; it also addressed arguments that a higher threshold incentivizes generation to operate efficiently.⁴¹ However, the June Order did not address or refute any of the arguments presented by the Industrials/Amtrak concerning the objective bases for at least 200 MW vs. 50 MW for a Retail Threshold. These arguments are summarized below. The Industrials/Amtrak respectfully request that the Commission reconsider and address the following objective bases for why a 200 MW Retail Threshold is preferable to a 50 MW Retail Threshold.

First, a 200 MW Retail Threshold would focus on reliability challenges caused by super-sized load, causing the resource adequacy concerns, while avoiding chilling industrial and institutional investment. The Industrials/Amtrak presented evidence showing that most load growth is driven by large data centers of 200 MW or greater. 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. It is this growth that has driven many of the current challenges on the grid. As recognized by the D.C. Circuit Court of Appeals, under

⁴⁰ June Order at P 208.

⁴¹ The Industrials/Amtrak respectfully note that in rejecting the grid efficiency argument, the Commission cited no evidence, study, or testimony explaining what will happen to grid efficiency with the changes to NITS netting rules. NITS with netting has efficiency incentives so deeply baked into the structure, it is unclear what changes will occur on the grid when that incentive is reduced. *See., e.g.*, June Order at P 211.

the cost-causation principle, “costs are to be allocated to those who cause the costs to be incurred and reap the resulting benefits.”⁴²

The June Order does not develop, rely on, or reference any reliability performance and risk assessment as applied to traditional industrial, traditional, and transportation loads to justify the application of the new netting rules to non-computational loads above 50 MW. Notably, the June Order briefly recognizes in a footnote, the North American Electric Reliability Corporation’s (“NERC”) review and development of reliability standards specific to computational loads⁴³ and signals its concern with allowing “large loads like data centers to net.”⁴⁴ However, the June Order does not substantiate the application of those same reliability and cost concerns for large data centers to smaller, traditional industrial loads. Notably, since the issuance of the December Order, NERC has increasingly focused its attention on developing new reliability standards specific to computational loads, not other traditional large loads. Since the issuance of the June Order, the Commission on July 16, 2026, announced a new proceeding for Reliability Standard(s) Pertaining to Computational Load Integration in Docket No. RD26-7-000. Furthermore, on June 30, 2026, the U.S. House of Representatives Committee on Energy and Commerce amended pending federal legislation, the Ratepayer Protection Act, aimed at protecting existing customers from paying for network upgrades triggered by data centers. In response to concerns raised by manufacturing groups, the Large Load Customer definition in the pending legislation now applies only to computational loads, not to all large loads over 100 MW.⁴⁵ The above statements and policy

⁴² *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 85 (D.C. Cir. 2014) (citing *Natl’ Ass’n of Regulatory Util. Commis. v. FERC*, 475 F.3d 1277, 1285 (D.C. Cir. 2007) (“NARUC”)).

⁴³ June Order at P 345, n. 792.

⁴⁴ June Order at P 79 (quoting December Order at P 186).

⁴⁵ See <https://www.congress.gov/119/meeting/house/119437/documents/BILLS-119-HR9340-A000370-Amdt-3.pdf> (last accessed July 20, 2026).

movements reflect growing recognition that computational loads present different system impacts than traditional large loads. Further, a large group of PJM transmission owners stated last year in the Large Load ANOPR Proceeding that *large data centers of 200 MW or greater* are the primary drivers of load growth.⁴⁶ Because most industrial and institutional load is under 200 MW, and load greater than 200 MW (as opposed to 50 MW) is primarily the cause of present challenges on the grid,⁴⁷ the remedy must be tailored to address the cause.

Second, a 200 MW Retail Threshold avoids major administrative disincentives for most industrial and institutional loads to operate on-site generation by avoiding the need to force existing retail customers into new and unfamiliar regulation. Left unchanged, the June Order will force some large industrial and institutional customers to become FERC-regulated public utilities, secure PJM membership, and undertake related credit and risk requirements. The world of PJM is complex, and many retail customers are focused on providing the goods or services they deliver every day—not being an energy company. Forcing such retail customers into new and unfamiliar regulation, PJM membership, and other federal requirements creates a substantial burden. There are sound policy and legislative reasons not to treat those integrated facilities as public utilities or to burden them with the regulatory demands required of wholesale generators in PJM.

⁴⁶ Reply Comments of the Indicated PJM Transmission Owners, *Interconnection of Large Loads to the Interstate Transmission System*, Docket No. RM26-4-000 (Dec. 5, 2025) (“To the extent the Commission asserts jurisdiction over large load interconnections, it should adopt a sufficiently narrow definition of ‘large load customer’ limited to large (200 MW or greater) data center customers. It is those customers that are primarily driving load increases.”).

⁴⁷ Dauphinais Affidavit at 34, 38, Attachment 2 and Attachment 3 (showing that data centers are typically at 300 MW and above). In reviewing relevant development in state regulatory proceedings in Michigan, Mr. Dauphinais highlighted evidence supporting a determination of defining large load at a 300 MW threshold, given that most data centers are at above 300 MW (whereas most manufacturers using more extensive BTMG operations would be below 300 MW in load).

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.⁴⁸ This proposal could mitigate 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.

Third, a 200 MW Retail Threshold aligns with regulatory logic and federal reference points that identify various “tiers” of large load. 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, the following federal reference points make sense:

- PURPA’s reference point for **“small” generation** is 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.
- Many large manufacturers come in this “middle” zone between “small” (under 80 MW) and “super-sized” (above 200 or 300 MW). For example, the largest industrial or institutional facility mentioned by the Commission in the June Order is reported to be slightly under 200 MW.
- Order 2023 and Order 2023-A also reflect this same logical grouping structure for generation sizing purposes. There, the Commission set forth tiers of study deposits,

⁴⁸ 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.”).

with the lowest tier being **generation under 80 MW**, the middle tier being **80 MW to under 200 MW**, and the upper tier being **200 MW or above**.

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 sit 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 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.

Fourth, a 200 MW Retail Threshold emphasizes stable rules for customers, a more durable approach than grandfathering, as demonstrated by Eastman and Amtrak. In Paragraph 246 of the June Order, the Commission stated that “Eastman’s concern appears to be addressed,” meaning that the Commission believes Eastman will qualify for grandfathering. However, even if Eastman and other large industrial and institutional customers do qualify for grandfathering, operating subject to grandfathering creates substantial uncertainty. It also does not address the need for facilities to expand and new ones to open, to realize the promise of American industry in PJM. The Administration and various PJM governors’ offices are pursuing economic development agendas that emphasize the importance of producing products in the United States. 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 BTMG will significantly increase Amtrak's operating costs and seriously affect the Northeast Corridor.⁴⁹ 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.

The Industrials/Amtrak respectfully request that the Commission reconsider the Retail Threshold. American industry is a vital part of the nation's electric grid. While the June Order provides some positive movement, without modification or clarification on certain key issues, it threatens to harm American industry, weaken resource adequacy, and result in undue discrimination. The Industrials/Amtrak respectfully request that the Commission reconsider the arguments raised herein and adopt a 200 MW Retail Threshold, leading to a better and more durable resolution of relevant issues.

- 2. While the June Order approved a narrow exemption for certain cogeneration QFs, the exemption is unduly narrow because it does not clearly allow QFs with low reliability and system risks or strong performance histories to also be exempt from the new netting rules, consistent with cost causation principles and the Commission's QF Back-up Regulations.**

In the June Order, the Commission authorized changes to PJM's BTMG rules because "the Commission found that PJM's existing retail BTMG netting 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

⁴⁹ 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.

planning.”⁵⁰ The Commission recognizes the potential that BTMG could trip offline or become unavailable, resulting in a large retail customer’s load appearing on the system.

The Commission also recognized in the June Order a narrow exemption for cogeneration QFs with precise characteristics, directing PJM to submit a process for exemption from the new retail BTMG netting rules for cogeneration QFs “if they demonstrate that they are integrated with load such that, when their generating facility trips offline, the load follows, and they thus do not present the reliability or resource adequacy concerns discussed in the December Order.”⁵¹

While the exemption provided in the June Order is a step in the right direction, it is overly narrow and does not reasonably account for cost-causation principles of bespoke behind-the-meter arrangements *that are designed and operated for minimum grid impact*, particularly cogeneration QFs, which must meet efficiency standards and are generally designed to be deeply integrated with the on-site load. As noted in PJM’s Compliance Filing, “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 known operational issues to date.”⁵² American industry and institutions have developed countless customized configurations to support their heavy operational loads, and in many cases, to integrate directly with a manufacturing or heating/cooling process. However, under the December Order and June Order, aside from the existing industrial and institutional facilities that qualify for grandfathering, beyond the 50 MW Retail Threshold, no pathway exists for most industrial and institutional facilities to demonstrate, and be rewarded for, their performance in operating their BTMG with minimal use of the grid, consistent with cost

⁵⁰ June Order at P 81. *See also id.* at P 16 (“retail BTMG netting 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’ full gross load in transmission and resource adequacy planning”).

⁵¹ *Id.* at P 142.

⁵² PJM Compliance Filing at 10.

causation principles. Instead of applying cost causation principles⁵³ and seriously grappling with general differences between QFs and other loads (particularly computational load), the June Order refers back to the generic concerns in Paragraph 186 of the December Order around resource adequacy, reliability, and cost shifting.⁵⁴

First, the June Order’s limited QF exemption demonstrates the need for a broader exemption for other QFs with limited grid impacts. This exemption from the new gross NITS rule makes sense because the QFs with those characteristics have a substantially lower risk profile. The risk is minimized by the facility's configuration and/or operations. Accordingly, it would not be just and reasonable to charge them for NITS and capacity on a gross basis.

While this exemption addressed one particular configuration with minimal grid impacts, the June Order neglected to address the limited reliability risk of other QFs, particularly cogeneration QFs, which are generally operated as highly reliable, efficient generation that takes strain off the grid and are designed and operated to function during system peaks.

⁵³ *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, 1255 (D.C. Cir. 2018); *see also El Paso Elec. Co. v. FERC*, 76 F.4th 352, 357 (5th Cir. 2023); *see also BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 268 (D.C. Cir. 2014) (The principle is a “matter of making sure that burden is matched with benefit.”); *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992).

⁵⁴ *See* June Order at P 41 (citing December Order at P 186), P 81. Interestingly, the June Order appears to confirm that an in-depth cost causation analysis has not yet been completed. The June Order asserts that the lack of Tariff clarity “introduces the risk that costs related to Co-Location Arrangements *may* not be allocated consistent with cost causation principles.” June Order at P 59 (emphasis added). As to BTMG arrangements, the entirety of the June Order’s reasoning that BTMG arrangements are no longer supported by cost causation principles hinges on the generic reference to “a change in circumstances,” yet the June Order tentatively asserts that “PJM’s existing retail BTMG netting rules *may* lead to both reliability and resource adequacy risks.” June Order at P 81 (emphasis added). The June Order’s inconclusiveness around the reliability and resource adequacy risks confirms that the Commission has not fully developed a performance and risk assessment. The Commission has not sufficiently examined the relevant data and considerations and has neither articulated a satisfactory explanation, nor provided a rational connection between the facts found and the choice made. *La. PSC v. FERC*, 866 F.3d 426, (D.C. Cir. 2017); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). As a result, applying the BTMG netting reforms to manufacturers and non-computational loads is arbitrary and capricious, is unsubstantiated, inconsistent with cost causation principles, and does not reflect reasoned decision-making.

The June Order takes a valued step toward recognizing the cost-causation issues unique to large industrial and institutional users, but it is insufficient. Under the June Order, above the 50 MW threshold, there is no distinction between a retail customer whose generation operates 99% of the time and one that operates 50% of the time, despite dramatically different uses of the transmission system. Not only is this a cost-causation issue (directly affecting the determination of a just and reasonable replacement rate), but rejecting performance-based exemptions also eliminates a major incentive for efficient operations.

Second, QFs warrant a broad exemption, or at least a pathway to an exemption, to obtain rates that comport with their performance, in accordance with cost causation principles.

Congress enacted the PURPA nearly 50 years ago.⁵⁵ PURPA directed the FERC to enact regulations to “encourage cogeneration and small power production, and to encourage geothermal small power production facilities of not more than 80 megawatts capacity.”⁵⁶ While small power production QFs have an 80 MW limit, there is no size limitation for cogeneration QFs, and the development of QFs for manufacturers aligns with the fact that some cogeneration QFs certainly exceed PJM’s current view of a Large Load being 50 MW. Under PURPA, electric utilities are required to offer QFs the opportunity to sell electric energy and to purchase electric energy output from those QFs.

⁵⁵ PURPA is codified as Section 210 of the Federal Power Act (“Section 210”). 16 U.S.C. § 824a-3. Under PURPA, 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. Cogeneration QFs must achieve certain efficiency standards and are highly efficient in their use of input fuels. 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 in his Affidavit, “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.” Dauphinais Affidavit at P 11.

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

Many QFs are highly efficient facilities, including cogeneration facilities, which produce both electricity and heat from the same fuel source, then make use of the “waste heat” in industrial operations. As part of the congressional mandate, QFs are entitled to access to supplementary, back-up, maintenance, and interruptible power, pursuant to regulations.⁵⁷ To maintain QF status, Commission regulations require certain QFs to meet specified efficiency standards. If there is a change in any of the factors contributing to a QF’s certification as a QF, the QF owner is obligated to advise the Commission.⁵⁸ Consequently, for both operational and regulatory reasons, many QFs operate with a high capacity factor, reliably operating during transmission peaks.⁵⁹

Without an appropriate exemption, *cogeneration QFs operating with a strong track record of performance and a high capacity factor will suddenly be paying for transmission service they do not use*. Absent a grandfathering exemption, removal of netting without an available alternative will be devastating to many industrial entities, including those that own cogeneration QFs, and in turn, damage the grid by rendering on-site generation uneconomic (and effectuating an unlawful taking of private property), chilling future on-site generation investment, and harming both American manufacturing *and* efforts to resolve the pending resource adequacy crisis in PJM.

Third, the Commission failed to meaningfully engage with the PURPA QF Back-up Regulations requiring back-up service with specified assumptions, resulting in an error of law that deemed back-up service as unrelated to transmission service. Should the Commission wish to amend PURPA regulations, it must initiate notice-and-comment rulemaking procedures under the APA.

⁵⁷ 18 C.F.R. § 292.305(b).

⁵⁸ 18 C.F.R. § 292.307(f).

⁵⁹ Pursuant to PURPA, “the electrical, thermal, and chemical output” of a qualifying cogeneration facility must be “used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility.” 16 U.S.C. § 824a-3 (n)(1)(A)(ii).

Section 292 of the Commission’s Regulations governs QFs. Under these Regulations, QFs are entitled access to supplementary power, back-up power, maintenance power, and interruptible power, and access to back-up power and maintenance power must meet certain requirements defined in the Regulations (“Required QF Back-up Assumptions”). “Back-up power” is defined in the regulations 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.”⁶⁰ The Required QF Back-up Assumption is the requirement that 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.” Bottom line: Regulations enacting PURPA ensure that QFs have access to back-up and maintenance service that meets the Required QF Back-up Assumptions regarding generator uptime.

For years, QFs in PJM have relied on the PJM Retail BTMG netting rules, which aligned with the Required QF Backup Assumptions, because NITS with netting does not assume “that forced outages or other reductions in electric output . . . will occur simultaneously, during the system peak, or both.”⁶¹ Consequently, NITS provided a just and reasonable back-up service to QFs. In fact, some facilities that would otherwise be QFs allowed their QF status to expire because of the traditional NITS alignment with the Required QF Back-up Assumptions.

In the June Order, the Commission dismissed the Industrials/Amtrak’s arguments concerning the Required QF Back-up Assumptions requirement in PURPA regulations. Specifically, the June Order stated:

⁶⁰ 18 C.F.R. § 292.101.

⁶¹ 18 C.F.R. § 292.305(c).

First, we clarify that the December Order’s replacement rate does not change any obligation under the Commission’s PURPA regulations regarding QFs’ access to supplementary, back-up, maintenance, and interruptible power. The replacement rate applies only to Network Customers’ usage of NITS under the tariff, and nothing in the replacement rate undoes the [PURPA regulatory requirement] that, as to QFs, ‘each electric utility shall provide . . . Supplementary power, Back-up power, Maintenance power, and Interruptible power.’ While Industrials suggest that removing netting rules may contradict Commission regulations that require back-up and maintenance services for cogeneration QFs, *Industrials do not explain how the replacement rate results in Industrials no longer being entitled to back-up and maintenance power under the Commission’s regulations.*⁶²

The June Order’s statement above serves as an admission that the June Order neither properly addressed arguments brought before it, nor considered all important aspects of the problem at issue.⁶³ The Industrials/Amtrak provided detailed explanation of how neither the FCD and NCFD services nor the gross NITS approach meet the Required QF Back-up Assumptions.⁶⁴ The Industrials/Amtrak also sponsored an affidavit by a technical consultant explaining these same concepts and outlining why the replacement rate does not meet the Required QF Back-up Assumptions. Industrials/Amtrak provided substantial evidence that the replacement rate negates the express guarantee of a rate based on the Required QF Backup Assumptions, unless factual data points out otherwise.⁶⁵ The Industrials/Amtrak incorporate those arguments and the Dauphinais

⁶² June Order at P 140 (emphasis added).

⁶³ *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43 (1983) (“an agency rule would be arbitrary and capricious if the agency . . . failed to consider an important aspect of the problem”).

⁶⁴ *See, e.g.*, Industrial/Amtrak Compliance Protest at 19; Responsive Brief of Industrial Customer Organizations and Amtrak, Docket Nos. EL25-49-000, EL25-49-001, AD24-11-000, EL25-20-000 (consolidated), at 13-19 (Mar 25, 2026); Reply Brief of Industrial Customer Organizations and Amtrak, Docket Nos. EL25-49-000, EL25-49-001, AD24-11-000, EL25-20-000 (consolidated), at 5-9 (Apr. 24, 2026).

⁶⁵ As explained by Mr. Dauphinais, the current BTMG netting construct for NITS permits QFs to receive the back-up power they are guaranteed—back-up power that is charged without a default assumption that the back-up power will be needed during peak times. If back-up services are needed during peak times, the current NITS design ensures customers pay for them by appropriately measuring peak usage. Dauphinais Affidavit at PP 28-29. As explained by Mr. Dauphinais, “With respect to the transmission component of back-up 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 [NITS].” He further states:

Affidavit into this Rehearing Request by reference.

Additionally, the June Order fails to engage with the Industrials/Amtrak's arguments on this topic by asserting that the December Order's directive "has no bearing on the rates at which a host utility provides backup service to QFs."⁶⁶ However, this explanation leads to an arbitrary and capricious result, because the Commission has not explained its interpretation of the regulatory text, the purpose of PURPA, or the practical realities of how back-up service is priced and paid. This is legal error with tangible adverse consequences for manufacturers in the PJM region. For the following reasons, the Industrials/Amtrak respectfully request that the Commission grant reconsideration of this matter and ensure that all QFs have access to back-up service that aligns with the Required QF Back-up Assumptions.

Fourth, the regulatory text of the QF Back-up Regulations indicates that the December Order does, indeed, affect "the rates at which a host utility provides backup service to QFs."⁶⁷

In the PURPA regulations, "rate" is defined as "any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any

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. 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 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.

Dauphinais Affidavit at PP 28-29.

⁶⁶ June Order at P 245.

⁶⁷ *Id.*

contract pertaining to the sale or purchase of electric energy or capacity.”⁶⁸ This definition is broad and does not limit itself to the “sticker price” alone, but to the components, practices, regulations, and even contracts related thereto. The Required QF Back-up Assumption is a regulation about a “rate” that is charged for back-up power. The rates for back-up power, like any retail rate, are developed based on the underlying wholesale costs—transmission and capacity costs being significant components. The June Order’s argument that its determination on NITS does not have “bearing” on the ultimate back-up service rate is mistaken.

Additionally, it is important to note that the PURPA regulations’ definition of “rate” includes not only energy, but capacity as well. Capacity, like energy, has a wholesale component, and the BTMG netting rules in the PJM Tariff currently involve both transmission and capacity cost responsibility. The Industrials/Amtrak must assume that, for customers not eligible to continue with netting, capacity charges will be calculated on a gross basis as well. Yet, the PURPA Regulations’ definition of “rate” includes capacity. The June Order erred by stating that the December Order has “no bearing” on the ultimate back-up service rate charged to a retail customer.⁶⁹ The Commission is responsible to ensure back-up rates comply with the FERC regulations, including the wholesale components directly under its purview.

Fifth, NITS has a direct impact on back-up power rates in restructured states, so changes to NITS directly affect whether back-up service includes the Required QF Back-up Assumptions set forth in the Commission’s QF Back-up Regulations. In restructured states, NITS costs are an essential component of back-up power costs. For example, in PPL Electric Utilities Corporation’s Tariff, the tariff sets a rate for Back-up service (distribution charge), but that same section makes

⁶⁸ 18 CFR § 292.101.

⁶⁹ June Order at P 245.

clear that the customer is separately responsible for transmission costs. Consequently, the use of a back-up service can directly affect transmission cost responsibility, depending on how and when it is used. Back-up service, like any retail service, has the wholesale components built in.

Along those lines, accepting the June Order’s statement that the Commission’s directive in the December Order “has no bearing on the rates at which a host utility provides backup service to QFs” would mean that QFs should be able to obtain back-up power *without use of the transmission system*. However, this notion flies in the face of the December Order and June Order, which make clear that retail configurations (such as BTMG) affect the transmission system. The June Order, addressing the Commission’s jurisdiction over BTMG, explains BTMG netting rules as “allow[ing] PJM to calculate the charges for transmission service in interstate commerce,” and not “targeting retail sales from BTMG.”⁷⁰ Similarly, while the FERC may not set local utilities’ retail back-up service rates, those rates are intimately connected with the transmission system and the underlying costs of transmission, which *are* determined by the Commission.

Finally, the QF Back-up Regulations essentially set a cost-causation requirement into the QF back-up rates. As recognized by the D.C. Circuit Court of Appeals, the “cost-causation principle” has been recognized “for decades” by “the Commission and the courts.” Under the cost-causation principle, “costs are to be allocated to those who cause the costs to be incurred and reap the resulting benefits.”⁷¹ In essence, the PURPA regulations protect a cost-causation approach to charging QFs for back-up power. Accordingly, the Commission should ensure QFs can access

⁷⁰ *Id.* at P 43.

⁷¹ *South Carolina*, 762 F.3d at 85 (citing *NARUC*, 475 F.3d at 1285).

back-up service with the Required QF Back-up Assumptions.⁷²

In conclusion, the June Order did not engage meaningfully with the FERC's own regulations requiring that back-up power based on certain cost-based assumptions be made available to QFs. With the changes to NITS netting rules, QFs that are not eligible for one of the Commission's exemptions (i.e., limited QF exemption or grandfathering) do not have a clear pathway forward to back-up service that is based on cost causation, and that respects the requirements of the Regulations.⁷³

The December Order and June Order implement new ratemaking methodologies that are contrary to the existing PURPA regulations. In another case, the D.C. Circuit Court of Appeals determined that the FERC's implicit acceptance of a new methodology for setting fees for hydropower projects "marked a change in [FERC's] own regulations."⁷⁴ As a result, the Court vacated FERC's methodology update because FERC did not engage in the required notice-and-

⁷² While PURPA regulations expressly recognize the need for QFs to occasionally draw from the grid, including for occasional unscheduled outages, that need is not limited to QFs. To function properly and under just and reasonable rates, other industrial, institutional, and transportation retail loads with on-site generation also require back-up service based on cost-causation. Absent access to retail netting, there is a sound basis to provide back-up service that recognizes the cost-causation principles of back-up and maintenance service for BTMG facilities that do not have QF status.

⁷³ Mr. Dauphinais explains in the attached Affidavit the reasons neither Firm nor Non-Firm CDS provides a cost-based back-up service for cogeneration QFs and similarly-situated retail customers. As to Firm CDS, Mr. Dauphinais stated:

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, 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.

Dauphinais Affidavit at P 44.

⁷⁴ *City of Idaho Falls v. FERC*, 629 F.3d 222, 223, 231 (D.C. Cir. 2011).

comment rulemaking procedures under Section 553 in the APA.⁷⁵ If the June Order is allowed to stand in this regard, it would be a violation of APA notice and comment rulemaking procedures by issuing an order, outside the rulemaking process, that is contrary to FERC's existing regulations.

3. The June Order's dismissal of the Industrials' unlawful regulatory takings argument on the grounds of "lack of finality" is arbitrary and capricious and inconsistent with governing appellate precedent.

In their rehearing request, the Industrials explained that the December Order indirectly effectuated an unlawful taking of private property without providing just compensation, in violation of the Fifth Amendment.⁷⁶ The Industrials provided examples to substantiate their takings argument, including cases in which the owner is deprived of economically beneficial uses of the property due to government action.⁷⁷

- Assume a large manufacturing facility with two behind-the-meter CHP units totaling approximately 100 MW. The facilities have been operational for an extended period of time and are QFs under PURPA, exporting and selling power into the PJM grid. The NITS and Capacity savings provide more than half of the value of the CHP units. Yet, the December Order directly threatens to put this manufacturer out of business, as the removal of the NITS savings alone would likely render the customer's retail BTMG uneconomic, resulting in the shutdown of the existing units and the manufacturer's inability to continue operating.⁷⁸

The Industrials explained that the December Order's abrupt shift to a "gross load" approach to transmission cost responsibility will leave the property at certain manufacturing sites with little to no economically beneficial remaining uses.⁷⁹ The Industrials/Amtrak emphasized that the

⁷⁵ *Id.*

⁷⁶ Industrials Rehearing Request at 31-34.

⁷⁷ *Id.* at 33 (citing *Lingle v. Chevron U.S.A.*, 544 U.S. 528, 538 (2005) (quoting *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992))).

⁷⁸ *Id.* at 32 (Example #2).

⁷⁹ *Id.*

December Order’s shift to the “gross load” approach causes substantial economic impacts and “has interfered with distinct investment-backed expectations,” especially in the context of PURPA QFs.⁸⁰ The June Order failed to engage these factual circumstances and instead dismissed the Industrials’ regulatory takings argument with “little more than a hand wave,”⁸¹ contending that the argument lacked finality.⁸²

But the December Order was clear that it did not just tentatively find, as in a Show Cause Order, that the existing retail BTMG netting rules *may* be unjust and unreasonable. Instead, the December Order definitively found that the BTMG rules in PJM’s Tariff “*are no longer just and reasonable* because loads with BTMG are not fully accounted for in resource adequacy planning...”⁸³ The June Order ignores this final determination and instead focuses on the lack of “a final decision on the applicability and design of the revised retail BTMG netting rule,”⁸⁴ such as the MW threshold for permitting continued netting by using BTMG. The United States Supreme Court has recently explained that, in the context of a regulatory taking, “[t]he finality requirement is relatively modest” and requires a showing that the final governmental action or regulation inflicts actual, concrete injury on the property of the affected party.⁸⁵ In the December Order, the Commission made a final determination that directly and materially affects the cost of electric service and operations for existing entities using BTMG retail netting. In the June Order, the Commission made a final determination to implement a 50 MW threshold for netting and

⁸⁰ *Id.* at 33-34 (citing *Penn Central Trans. v. New York City*, 438 U.S. 104, 124 (1978)).

⁸¹ *Del. Division of Pub. Advocate v. FERC*, 3 F.4th 461, 429 (D.C. Cir. 2021).

⁸² June Order at P 148.

⁸³ December 2025 Order at P 2 (emphasis added).

⁸⁴ June Order at P 148.

⁸⁵ *Pakdel v. City and County of San Francisco*, 594 U.S. 474, 478 (2021) (citing *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 739 (1997) and *Williamson Cty. Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 193 (1985)).

envisioned implementing grandfathering provisions and exemptions for certain existing customer BTMG arrangements. Accordingly, the takings argument is now ripe and continues to apply to any customer BTMG arrangements that do not qualify based on the 50 MW Retail Threshold or through the implementation of grandfathering or an exemption through the PJM compliance process.⁸⁶

As the June Order does throughout, it cites back to Paragraph 186 in the December Order, which only made generic, non-specific findings that “circumstances have changed since the Commission approved PJM’s retail BTMG netting rules such that these rules are no longer just and reasonable.”⁸⁷ The June Order asserts that it engaged only in rate-setting and enjoys discretion to balance the interests of the respective parties.⁸⁸ The June Order then proceeds to cite a non-binding concurring opinion for the proposition that the Takings Clause is satisfied when there is a “striking of a reasonable balance of competing interests.”⁸⁹ But the June Order does not demonstrate the Commission has reasonably balanced any competing interests, let alone defined any applicable parties and their interests. The Commission has not shown that it made detailed findings to select a rate “from the broad zone of reasonableness” to show that its selected rate is not confiscatory.⁹⁰ Moreover, the June Order did not engage the economic arguments presented by the Industrials. Instead, the June Order arbitrarily and capriciously reasserted its reliance on generic findings in Paragraph 186 in the December Order, which may apply in the context of larger computational

⁸⁶ See June Order at P 86 (explaining that Industrials must demonstrate why their facilities would not present the cost shift, reliability, or resource adequacy concerns discussed in the December Order) (citing December Order at P 186).

⁸⁷ *Id.* at P 149 (citing December Order at P 186).

⁸⁸ *Id.*

⁸⁹ *Id.* at P 149 (quoting *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1191 (D.C. Cir. 1987) (*en banc*) (Starr, J. concurring)).

⁹⁰ See *id.* at P 149 at n. 380 (quoting *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 770 (1968)).

loads co-locating with generation resources, but have not been shown to apply in the context of onsite generation at manufacturing facilities.

Even if the Commission substantively denies the unlawful takings claim, then Industrials/Amtrak request the Commission in its order on rehearing to clarify that the Commission will not procedurally challenge the ripeness of an unlawful takings claim if and/or when a manufacturer or customer with BTMG advances such a claim upon concluding that it will lose all or part of its property value as a direct result of the Commission's final determination with respect to BTMG netting. The Industrials/Amtrak ask the Commission to clarify and confirm when agency action is final so that injured retail customers may timely seek redress for harms inflicted by FERC's orders.⁹¹

⁹¹ The Industrials/Amtrak note that a favorable resolution of the relief requested in this rehearing request that resolves the first two specifications of error raised in this rehearing request, *supra* at pp. 9-31, regarding the 200 MW threshold and the PURPA issues, would obviate the need for continued litigation of the takings claim pending before the Third Circuit. The Industrials/Amtrak would only possibly need to participate in further litigation to help protect and defend any Commission determination to implement a 200 MW threshold and grant this rehearing request concerning the PURPA and QF issues raised herein.

V. CONCLUSION

WHEREFORE, the Industrials/Amtrak respectfully request that the Commission grant rehearing of the June Order for the reasons set forth herein.

Respectfully submitted,

By: /s/ Susan E. Bruce
Susan E. Bruce
Kenneth R. Stark
Matthew L. Garber
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17101
Tel: 717-232-8000
E-mail: sbruce@mcneeslaw.com
E-mail: kstark@mcneeslaw.com
E-mail: mgarber@mcneeslaw.com

Counsel to 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”)

Dated: July 20, 2026

CERTIFICATE OF SERVICE

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

Dated this 20th day of July, 2026.

/s/ Matthew L. Garber

Matthew L. Garber

100 Pine Street

Harrisburg, PA 17101

Tel: 717-232-8000

E-mail: mgarber@mcneeslaw.com