UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	**Docket No. ER25-2653-000**

PROTEST OF THE ENVIRONMENTAL LAW & POLICY CENTER, NATURAL RESOURCES DEFENSE COUNCIL, SUSTAINABLE FERC PROJECT, SIERRA CLUB, PUBLIC CITIZEN, INC., CITIZENS UTILITY BOARD OF ILLINOIS AND ENVIRONMENTAL DEFENSE FUND

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure,[1] the Environmental Law & Policy Center, Natural Resources Defense Council, Sustainable FERC Project, Sierra Club, Public Citizen, Inc., Citizens Utility Board of Illinois, and the Environmental Defense Fund (collectively, the "Public Interest Organizations" or "PIOs") submit this protest to the Federal Power Act ("FPA") Section 205 filing by PJM Interconnection, LLC concerning allocation of costs for implementation of the U.S. Department of Energy Order 202-25-4 requiring Eddystone Units 3 and 4 to operate through summer 2025 ("Eddystone 202(c) Order").[2] PJM submitted this filing because it "does not currently have a mechanism to recover costs associated with resources directed by the Secretary of Energy to maintain operations for resource adequacy purposes pursuant to FPA section 202(c)."[3] PJM proposes to recover these costs—to be determined under a methodology which PJM asserts is not itself

[1] 18 CFR § 385.211 (2024).
[2] PJM Interconnection, L.L.C., Docket No. ER25-2653-000, Proposal to Allocate Costs Required to Implement U.S. Department of Energy Order No. 202-25-4 of the Secretary of Energy Pursuant to Federal Power Act Section 202(c), filed June 26, 2025. PJM submitted proposed tariff revisions as well as a transmittal letter explaining those revisions ("Transmittal Letter").
[3] Transmittal Letter at 3.

subject to Commission review—from all wholesale consumers in the PJM region "using a methodology consistent with the present allocation of costs associated with the recovery of region-wide capacity costs."[4]

As explained further below, PJM has not supported its proposed cost allocation because it fails to provide substantial evidence that consumers throughout the PJM region will benefit materially from the retention of Eddystone 3 and 4 for alleged resource adequacy purposes. Consumers throughout PJM have already purchased more-than-sufficient capacity resources to meet PJM's own resource adequacy standards for the 90-day period in which the Eddystone 202(c) Order will be in effect. Furthermore, PJM's stated intention to dispatch Eddystone 3 and 4 for purposes *other than* resource adequacy conflicts with its proposed cost allocation mechanism. PJM asks the Commission to determine all of these cost allocation questions while also accepting that the Commission will have no oversight regarding the actual costs.

Approving this unjust and unreasonable cost allocation proposal would set a bad precedent for future proceedings that PJM or other utilities may file to allocate the costs of operating generation units pursuant to likely future emergency orders; the Commission must ensure rigorous oversight of the costs of Section 202(c) orders and that any customers paying these costs receive material benefits.

I. BACKGROUND

A. Eddystone Generating Station

Constellation Energy Group owns and operates the Eddystone Generating Station, a six-unit, 820 megawatt ("MW") power plant located along the banks of the Delaware River in

[4] *Id.*

Eddystone, Pennsylvania.[5] Eddystone Units 3 and 4 have each operated less than 1% of the time during the last four years.[6] On December 1, 2023, Constellation notified PJM of its intent to deactivate Eddystone Units 3 and 4 effective May 31, 2025.[7] In that letter, Constellation explained that it was "retiring Eddystone Units 3 and 4 because continued operation of these units is expected to be uneconomic."[8] Such a notice triggers PJM's process under Section 113.2 of its Open Access Transmission Tariff ("OATT") to study whether the deactivation will cause any reliability violations to the PJM transmission system. In February 2024, PJM sent a letter to Constellation indicating that it had completed its study and had identified no reliability violations; PJM granted permission to deactivate "on May 31, 2025, or sooner if desired."[9]

PJM's 2024 assessment that Eddystone's retirement would have no impact on reliability is confirmed by the Commission's 2025 Summer Energy Market and Electric Reliability Assessment issued on May 15, 2025, which documented no reliability concerns with the impending deactivation of Eddystone—indeed, FERC's report omits PJM from the regions that "may face a higher likelihood of tight generation availability during a range of conditions."[10] The Commission's May 15, 2025 report mentions the impending Eddystone deactivation, with no caveat that its retirement poses any specific reliability concerns.[11]

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[5] Constellation, Eddystone Generating Station, https://www.constellationenergy.com/our-company/locations/location-sites/eddystone-generating-station.html (last visited June 20, 2025).
[6] U.S. Energy Information Administration, Form EIA-923, Power Plant Operations Report, Net Generation Data for Eddystone Generation Station, 2020-2024, https://www.eia.gov/electricity/data/eia923/ (accessed June 20, 2025); U.S. EPA, CEMS Gross Load Data for Eddystone Generating Station, 2020–2023, CAMPD, https://campd.epa.gov/ (accessed June 20, 2025) (2024 capacity factor estimated using average gross-to-net ratio from 2020–2023).
[7] Letter from Bryan Hanson, Constellation, to Michael Bryson, PJM (Dec. 1, 2023), https://www.pjm.com/-/media/DotCom/planning/gen-retire/deactivation-notices/eddystone-deactivation-letter.pdf.
[8] *Id.*
[9] Letter from Paul McGlynn, PJM, to Bryan Hanson, Constellation (Feb. 27, 2024), https://www.pjm.com/-/media/DotCom/planning/gen-retire/deactivation-notices/pjm-response-letter-eddystone.pdf.
[10] Federal Energy Regulatory Commission, Summer Energy Market and Electric Reliability Assessment, at 3 (May 15, 2025).
[11] *Id.* at 35.

B. PJM is Resource Adequate for Summer 2025 by its Own Indicators

Through PJM's Reliability Pricing Model ("RPM"), PJM ratepayers have procured sufficient capacity to maintain reliable grid operations for the summer of 2025. The Base Residual Auction for the delivery year encompassing the period of emergency that the Department identifies in the Order—Delivery Year 2025-2026—cleared more capacity than the Reliability Requirement.[12] Specifically, the auction cleared 135,684 MW of unforced capacity, representing a 18.6% reserve margin—0.8 percentage points higher than the target reserve margin of 17.8%.[13] Based on PJM's acceptance of Constellation's June 1, 2025 deactivation date, Constellation did not offer the Eddystone Units into the auction. Thus, the auction cleared more than sufficient resources for the 2025-2026 delivery year without Eddystone's capacity being included or otherwise counted on. As recently as May 9, 2025, PJM stated that it has sufficient generation and contracted demand response resources to meet even extreme demand scenarios for this summer.[14] PJM's assessment is consistent with that of the North American Electric Reliability Corporation ("NERC"), which indicates that PJM has adequate anticipated resources for both normal and extreme summer load conditions, and that PJM anticipates calling upon demand response resources during any extreme high temperatures.[15] NERC further notes that "PJM is forecasting 27% installed reserves (including expected committed demand

[12] PJM, 2025/2026 Base Residual Auction Report 3 (July 30, 2024), https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-base-residual-auction-report.pdf.
[13] *Id.* Two transmission-constrained areas that must import capacity cleared at the price cap for those areas, indicating that they had insufficient internal capacity to meet their internal demand for the delivery year. These two areas–Baltimore Gas & Electric and Dominion–are in Maryland and Virginia, respectively, and are not be able to import any additional capacity even if it were available elsewhere in the region, due to the transmission constraints.
[14] *See* PJM Interconnection, PJM Summer Outlook 2025: Adequate Resources Available for Summer Amid Growing Risk, PJM Inside Lines (May 9, 2025), https://insidelines.pjm.com/pjm-summer-outlook-2025-adequate-resources-available-for-summer-amid-growing-risk/.
[15] NERC, 2025 Summer Reliability Assessment 5, 25 (May 2025), https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2025.pdf.

response), which is above the target installed reserve margin of 17.7% necessary to meet the 1-day-in-10-years LOLE criterion."[16]

C. The Department of Energy's May 30 Section 202(c) Order Regarding Eddystone 3 and 4

On May 30, 2025—one day prior to Eddystone's planned deactivation date —the Department of Energy ("the Department") issued its order under Section 202(c) of the FPA, based on its "determin[ation] that an emergency exists in portions of the electricity grid operated by [PJM] due to a shortage of facilities for the generation of electric energy, resource adequacy concerns, and other causes."[17] The Order provides a brief, general description of the "Emergency Situation" based primarily on PJM public statements and regulatory filings referring to a "growing resource adequacy concern" that PJM asserts will arise by the end of the decade due to exceptional load growth and a rate of new entry that is inadequate to replace resource retirements.[18] The "declared state of national energy emergency" is also cited as a basis for the Department's determination of an emergency. The Department asserts that the retirement of the Eddystone Units would "further decrease available dispatchable generation within PJM's service territory" and therefore exacerbate these general issues.[19] Based on this determination, the Department orders Constellation to take all measures necessary to ensure that the Eddystone Units are available to operate and orders PJM to take steps to employ economic dispatch for the Units.[20] The Order includes various reporting requirements and instructs PJM and Constellation to file tariff revisions or waivers necessary to effectuate the order.[21]

[16] *Id.* at 25.
[17] Order at 1.
[18] *Id.* at 1-2.
[19] *Id.* at 2.
[20] *Id.*
[21] *Id.*

The Order also requires PJM, by June 15, 2025, to provide the Department "with information concerning the measures it has taken and is planning to take to ensure the operational availability of the Eddystone Units consistent with the public interest."[22] PJM published the letter it provided to the Department on June 13, 2025.[23] That letter indicates that PJM has worked with Constellation to develop an Operations Memorandum setting out the circumstances in which Eddystone can be committed to run, including: (1) supporting the PJM system operation within established thermal, voltage, and stability limits, when these needs "cannot otherwise be met with available economically dispatched generating resources;" (2) system restoration needs; and (3) a Capacity Emergency, during which "PJM determines that the resources scheduled for an operating day are not sufficient to maintain the appropriate reserve levels for PJM."[24]

PJM's use of Eddystone during the June heatwave demonstrates that PJM is not relying on Eddystone exclusively for resource adequacy purposes. PJM provided notice to the Department of Energy that it dispatched both Eddystone Units 3 and 4 between June 23, 2025 and June 25, 2025,[25] but that notice specifically omits information about the reason for the dispatch.

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[22] *Id.* at 3.

[23] Letter from Michael Bryson, PJM, to Secretary of Energy Christopher Wright, PJM Report in Compliance with Ordering Paragraph D of the Department of Energy's May 30, 2025 Order No. 202-25-4 (June 13, 2025), https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20250613-doe-pjm-report-on-compliance-with-Eddystone-order-202-25-4.pdf.

[24] *Id*. The complete Operations Memorandum has not been posted publicly, but PJM has provided a summary of it. Eddystone 3 and 4 Unit Reporting and Commitment Process, *available at* https://www.pjm.com/-/media/DotCom/committees-groups/committees/oc/postings/20250612-eddystone-3-and-4-unit-reporting-and-commitment-process.pdf ("Eddystone Operations Memo").

[25] PJM Compliance Report to Department of Energy Order No. 202-25-4, PJM Interconnection, L.L.C. (June 24, 2025), https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20250624-doe-compliance-report-for-eddystone-units-3-and-4.pdf ("June 24, 2025 Compliance Report"); PJM Compliance Report to Department of Energy Order No. 202-25-4, PJM Interconnection, L.L.C. (June 25, 2025), https://www.pjm.com/-/media/DotCom/documents/other-fed-state/20250625-pjm-report-in-compliance-w-ordering-paragraph-b-of-the-doe-20250530-order-no-202-25-4.pdf ("June 25, 2025 Compliance Report"); PJM Compliance Report to Department of Energy Order No. 202-25-4, PJM Interconnection, L.L.C. (June 26, 2025), https://www.pjm.com/-

No "Capacity Emergency" or Performance Assessment Interval (*i.e.*, a period of time in which the performance of committed capacity resources would be assessed to inform penalties or bonuses), was declared during that period.[26] In fact, PJM was exporting energy to its neighboring grid regions, including MISO and NYISO throughout the period. PJM exported at least 1,000 megawatts throughout the period, and at times exported nearly 6,000 megawatts. PJM averaged roughly 4,000 megawatts of exports over the course of June 24 and June 25, a period during which PJM ran Eddystone 24 hours a day, according to PJM's compliance filings.[27]

II. PROTEST

A. Forcing PJM Customers to Pay for a Facility That Does Not Benefit Them Would Violate the Federal Power Act's Cost Causation Requirement

Rates established by the Commission pursuant to Section 202(c) must be "just and reasonable."[28] One component of the just and reasonable standard is the cost causation principle that "all approved rates reflect to some degree the costs actually caused by the customer who must pay them."[29] In *Illinois Commerce Commission v. FERC*, the 7th Circuit held that "FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities

/media/DotCom/documents/other-fed-state/20250626-pjm-report-in-compliance-with-ordering-para-b-of-the-doe20250530-order-no-202-25-4.pdf ("June 26, 2025 Compliance Report").

[26] *See* PJM Emergency Procedures Postings, June 23-26, https://emergencyprocedures.pjm.com/ep/pages/dashboard.jsf (omitting any Action or Message Type equivalent to a "Capacity Emergency"); *see also* https://insidelines.pjm.com/june-24-update-maximum-generation-alert-extended-to-june-25/

[27] June 25, 2025 Compliance Report; June 26, 2025 Compliance Report. *See also* "Early Season Heat Stressed The Eastern Interconnection," Grid Status, June 27, 2025, https://blog.gridstatus.io/early-heat-stressed-the-eastern-interconnect/ (discussing PJM exports during June heatwave). The PIOs independently reviewed PJM data available at https://dataminer2.pjm.com/feed/act_sch_interchange to confirm finding in Grid Status report.

[28] 16 U.S.C §§ 824a(c)(1), 824d(a). Section 202(c) permits the Commission to "prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party."

[29] *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992). *K N Energy* arose under Section 4 of the Natural Gas Act ("NGA"), which contains the same "just and reasonable" standard as Section 202(c) of the Federal Power Act. Courts generally regard cases applying the just and reasonable standard of the NGA as binding precedent in Federal Power Act disputes. *See, e.g., Ky. Util. Co. v. FERC*, 760 F.2d 1321, 1325 n.6 (D.C. Cir. 1985) ("It is, of course, well settled that the comparable provisions of the Natural Gas Act and the Federal Power Act are to be construed in *pari materia*"). *See also Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash.*, 554 U.S. 527 (2008) (applying NGA cases to FPA just and reasonable standard).

from which its members derive no benefits, *or benefits that are trivial in relation to the costs sought to be shifted to its members.*"[30] The "cost causer pays" principle and the "beneficiary pays" principle are two sides of the same coin, with courts applying them interchangeably.[31] The bottom line is that the Commission cannot allocate a facility's costs to ratepayers who receive no material benefit from the facility.

PJM's cost allocation proposal violates that principle because there is no evidence that ratepayers across the PJM footprint will benefit from Eddystone's continued operation. PJM states that its proposed methodology aligns with the "resource adequacy purposes" of the Order. But PJM ratepayers are already paying to fulfill their resource adequacy needs this year through PJM's RPM.[32] As the Commission explained in February, the purpose of the RPM is to "ensure that enough capacity is procured, at a reasonable cost, to maintain reliable grid operations. . . . The concept of sufficient capacity on the transmission system to maintain reliable operations is termed 'resource adequacy.'"[33] The Base Residual Auction for the delivery year encompassing the period of emergency that the Department identifies in the Order—Delivery Year 2025-2026—cleared more capacity than PJM itself determined to be necessary.[34] Ratepayers are paying $14.7 billion to procure that capacity and satisfy their resource adequacy obligations.

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[30] *Illinois Com. Comm'n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009) (emphasis added).
[31] *See Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (courts should "evaluate compliance [with the cost causation principle] by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party").
[32] PJM Capacity Auction Procures Sufficient Resources To Meet RTO Reliability Requirement," PJM Inside Lines (July 30, 2024), https://insidelines.pjm.com/pjm-capacity-auction-procures-sufficient-resources-to-meet-rto-reliability-requirement/.
[33] *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,084 (2025)
[34] PJM, 2025/2026 Base Residual Auction Report 3 (July 30, 2024), https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2025-2026/2025-2026-base-residual-auction-report.pdf.

PJM's performance during the June heatwave underscores the fact that PJM ratepayers have already obtained sufficient capacity through the RPM. On June 24, the height of the heatwave, PJM hit its highest peak load since 2011.[35] Load exceeded PJM's summer peak forecast by over 6,000 megawatts. Yet PJM did not declare a capacity emergency. In fact, PJM continued exporting large amounts of power to neighboring regions throughout the three-day period.[36] PJM was a net exporter to NYISO, the region closest to Eddystone, throughout the day on June 24 and 25, at times exporting more than 2,000 megawatts of power. PJM averaged over 1,000 megawatts in exports to NYISO during the three-day period. During that same period, PJM ran Eddystone for a total of more than 60 hours, accumulating costs that PJM now proposes to pass on to PJM ratepayers for the alleged purposes of resource adequacy.[37] That PJM ran Eddystone 24 hours a day at the same time it was exporting power to neighboring regions suggests that the beneficiaries of Eddystone's continued operation may lie outside of PJM entirely.

In sum, PJM's proposal asks ratepayers across PJM to pay for something—resource adequacy—they have already paid for once. PJM ratepayers have no need for, and will not materially benefit from, additional generating capacity.[38] PJM's dispatch of Eddystone during a recent summer heat wave only raises more questions about the beneficiaries of the units'

[35] June 24 Update: Maximum Generation Alert Extended to June 25, PJM Inside Lines (June 24, 2025), https://insidelines.pjm.com/june-24-update-maximum-generation-alert-extended-to-june-25/.
[36] "Early Season Heat Stressed The Eastern Interconnection," Grid Status (June 27, 2025), https://blog.gridstatus.io/early-heat-stressed-the-eastern-interconnect/. The PIOs independently reviewed PJM data available at https://dataminer2.pjm.com/feed/act_sch_interchange to confirm findings in Grid Status report.
[37] June 24, 2025 Compliance Report; June 25, 2025 Compliance Report; June 26, 2025 Compliance Report.
[38] PJM asserts that the Commission must approve its cost allocation proposal in order to "avoid potential claims of an unconstitutional taking." Transmittal Letter at 3 (citing *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1189 (D.C. Cir. 1987) (Starr, C.J., concurring). Allocating the costs of Eddystone to consumers who do not benefit from its operation would not resolve any potential constitutional infirmity; it would merely shift the burden of the purported taking from Constellation onto ratepayers. The Constitution does not invite, much less require, such an approach.

retention, which PJM has not addressed in its Section 205 filing. Because PJM and the Department did not provide evidence that PJM ratepayers would otherwise benefit from Eddystone's continued operation, the Commission cannot require them to pay Eddystone's costs.

B. PJM and the Department Have Not Provided Evidence to Support a Reasoned Cost Allocation Determination

PJM's proposal arises from its determination that "the Eddystone Units are being retained for resource adequacy purposes under Order No. 202-25-4 and not to meet localized transmission reliability needs."[39] PJM provides no other rationale for the proposal to allocate costs across all load-serving entities in PJM, from Illinois to Virginia. Nor does PJM provide any evidentiary support for its filing beyond the Order itself.

Contrary to PJM's proposal, the Order does not declare a resource adequacy emergency that applies to every load-serving entity in PJM. Instead, the Order states that "an emergency exists in *portions of the electricity grid operated by [PJM]* due to a shortage of facilities for the generation of electric energy, resource adequacy concerns, *and other causes*."[40] Likewise, a referral letter that the Department filed with the Commission on June 17, 2025, states that "an emergency exists in portions of the electric grid operated by PJM."[41] The referral letter further states that the Eddystone Units "shall not be counted as capacity resources."[42] Neither the Department nor PJM's filing clarifies which "portions of the electric grid" are under a state of emergency or the precise cause of that emergency.

Nor does the Order provide evidence to support a determination that every load-serving entity in PJM will benefit from Eddystone's operation. Rather, the Department largely relies on

[39] Transmittal Letter at 15-16.
[40] Order at 1 (emphasis added).
[41] DOE Referral to the Federal Energy Regulatory Commission, Docket No. AD25-15, at 1 (June 17, 2025).
[42] *Id.*

statements from PJM itself describing a "growing resource adequacy concern" to justify the Order. Those statements, however, do not indicate that there is a shortage of generation affecting every load-serving entity in PJM this summer. Indeed, in one of the documents, PJM specifically states that it has "adequate reserves to maintain reliability" this summer.[43]

In sum, PJM and the Department have not provided enough evidence for the Commission to act in this proceeding. At a minimum, the Department and PJM must identify which portions of the PJM system are under emergency conditions requiring Eddystone's continued operation this summer. The Department and PJM must also explain the specific nature of that emergency, including the "other causes" the Department references in the Order. Absent this information, the Commission cannot determine which ratepayers, if any, benefit from Eddystone's continued operation and, accordingly, cannot make a reasoned decision on the appropriate cost allocation for the Order costs. Any decision would necessarily be arbitrary, capricious, and contrary to law.

C. PJM Proposes to Operate Eddystone Under Circumstances that Require a Different Allocation of Costs than What It Proposes

PJM states that because "Order No. 202-25-4 directs the Eddystone Units to maintain operations . . . for resource adequacy purposes," it "is proposing to allocate the cost associated with such credit to Load Serving Entities using a methodology consistent with the present allocation of costs associated with the recovery of region-wide capacity costs."[44] Despite the Order's ostensible basis for ordering Eddystone to remain in operation being limited to resource adequacy, PJM has agreed with the owner of the Eddystone units—Constellation Energy Group—that PJM may also dispatch the units in other circumstances, including for system

[43] PJM Summer Outlook 2025: Adequate Resources Available for Summer Amid Growing Risk, PJM Inside Lines (May 9, 2025), https://insidelines.pjm.com/pjm-summer-outlook-2025-adequate-resources-available-for-summer-amid-growing-risk/.
[44] Transmittal Letter at 4.

restoration and to support PJM system operation "within established thermal, voltage, and stability limits."[45]

PJM already has tariff provisions to allocate costs associated with generator retention to "maintain[] system operation within established thermal, voltage, and stability limits," as these are the kinds of transmission reliability needs that give rise to reliability-must-run ("RMR") arrangements in PJM.[46] The costs of such arrangements are allocated to consumers in the zone of the PJM transmission owner (one or more) "that will be assigned financial responsibility for the reliability upgrades necessary to alleviate the reliability impact of the RMR unit retiring."[47] Costs for Black Start Service in PJM—equivalent to PJM and Constellation's system restoration basis for operating Eddystone—are allocated to network service customers and point-to-point reservations, or zonally, depending on the circumstances.[48] The Eddystone Operations Memo thus contemplates operating the units for reasons unrelated to resource adequacy, and for a purpose already covered by an existing, Commission-approved cost allocation methodology, but to nevertheless recover these costs from all load in PJM, rather than just a more local set of consumers.[49] PJM fails to explain how its proposed cost allocation methodology comports with cost causation principles given the various reasons that Eddystone 3 and 4 may incur costs to run in response to PJM dispatch.

[45] Eddystone Operations Memo.
[46] *See* OATT, Part V, Section 113.2; *see also* Transmittal Letter at 4.
[47] https://www.pjm.com/-/media/DotCom/committees-groups/cifp-doe-ca/2025/20250610/20250610-item-04-critical-issue-fast-path-doe-202c-cost-allocation-presentation.pdf, at slide 12.
[48] *See* Open Access Transmission Tariff Sched. 6A, paragraphs 25-26.
[49] Given that PJM studied the reliability of the transmission system upon deactivation of Eddystone 3 and 4, and found no issues, it is highly questionable why PJM would ever need to operate Eddystone 3 and 4 for transmission reliability purposes, as the Eddystone Operations Memo contemplates. Letter from Paul McGlynn, PJM, to Bryan Hanson, Constellation (Feb. 27, 2024), https://www.pjm.com/-/media/DotCom/planning/gen-retire/deactivation-notices/pjm-response-letter-eddystone.pdf.

D. The Commission Must Reject PJM's Assertion that the Eddystone Costs are Unreviewable.

PJM asserts that "a rate reached by mutual agreement of PJM and [Constellation] obviates the need to obtain Commission (or, for that matter, DOE) approval of the rate."[50] PJM's position is that, while the Commission has authority to review the *allocation* of Eddystone's costs, the *costs themselves* are not subject to regulatory scrutiny of any kind. To support that view, PJM relies on the Commission's 2001 decision in *San Diego Gas & Electric.*[51]

The Commission must reject PJM's remarkable claim that Eddystone costs are exempt from regulatory review. As discussed below, the plain language of the Federal Power Act does not permit such an interpretation. Moreover, PJM's reading of Section 202(c) would mean the Commission has jurisdiction over only part of a single wholesale rate—the allocation of costs but not the calculation of those same costs. PJM identifies no precedent for this unusual division of authority. PJM's reading of the FPA would also place outsize importance on establishing precisely which parties are "affected by" a Section 202(c) Order.

i. The Federal Power Act Unambiguously Provides the Commission with Authority to Review All Wholesale Rates and Charges.

PJM's assertion that the Commission does not have authority over Eddystone's costs conflicts with the plain language of the FPA. Section 201 of the FPA establishes the scope of the Commission's jurisdiction, extending it to "sales of electric energy at wholesale," *i.e.* sales for resale.[52] And Section 205 declares that "*[a]ll* rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission . . . shall be just and reasonable, and any such rate or charge

[50] Transmittal Letter at 12.
[51] Transmittal Letter at 11-12 (*citing San Diego Gas & Elec. Co. v. Sellers of Mkt. Energy & Ancillary Servs.*, 97 FERC ¶ 61,275, at 62,196 (2001)).
[52] 16 U.S.C. § 824.

that is not just and reasonable is hereby declared to be unlawful."[53] Those provisions apply to tariff rates and rates established by contract, as Supreme Court explained in *Morgan Stanley Capitol Group, Inv. v. Public Utility District No. 1 of Snohomish County*.[54]

The Eddystone costs that PJM proposes to pass through to load-serving entities are charges made by a public utility in connection with the sale of electric energy subject to the Commission's jurisdiction. Under the plain language of FPA sections 201 and 205, the Commission thus has jurisdiction over those charges.

PJM disregards sections 201 and 205, and instead reads Section 202(c) as providing an exemption from the Commission's jurisdiction where parties agree to charges pursuant to a Section 202(c) order. The text of Section 202(c) does not support that reading. Rather, Section 202(c) contains an *affirmative* grant of authority to the Commission, beyond what Sections 205 and 206 provide: "If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission . . . *may prescribe by supplemental order* such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party."[55] Section 202(c) thus allows the Commission to provide compensation outside of the ordinary ratemaking procedures of FPA sections 205 and 206. Nothing in Section 202(c) *limits* the Commission's jurisdiction over charges established through an agreement between parties affected by a 202(c) order.

San Diego Gas & Electric does not address the Commission's jurisdiction under Sections 201 and 205 of the FPA, and the Commission therefore should not extend that decision beyond

[53] 16 U.S.C. § 824d (emphasis added).
[54] *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, Wash., 554 U.S. 527, 535 (2008). When parties agree to a rate through a contract, the Commission's just and reasonable review focuses on whether the rate harms the public interest. *Id* at 548.
[55] 16 U.S.C. § 824a(c).

the facts of that case.[56] *San Diego Gas & Electric* concerned spot market transactions between specific sellers and the California ISO during the California electricity crisis. The Department of Energy had ordered the California ISO to make those spot market purchases under Section 202(c). The California ISO later sought refunds for those transactions, but the Commission found that because the parties had agreed to the price at the time of the sales, Section 202(c) provided "no role for the Commission."[57] The Commission's limited analysis did not address the scope of its jurisdiction under Section 201 or its statutory obligation under Section 205 to ensure that all wholesale rates and charges are just and reasonable. Nor did the Commission consider how Section 202(c) might apply to costs arising from the ongoing operation of a generating facility as opposed to discrete spot market transactions.

PJM's position that the costs of Eddystone are exempt from Commission review represents a break from seventy years of precedent going back to *Federal Power Commission v. Sierra Pacific Power Company*.[58] In PJM's view, a Section 202(c) order constitutes a blank check to establish charges that may be passed on to other entities and customers with no opportunity for regulatory review. It ignores the fundamental purpose of the Federal Power Act—to provide a check on private utilities.

Nor does the fact that Constellation will be compensated based upon a formula methodology approved by the Commission for use under different circumstances (compensation for units that voluntarily remain in operation under OATT Part V, or reliability-must-run arrangements) insulate its application to the Eddystone units from Commission review. As one example, it is not clear that a formula rate which includes multipliers in order to incent a unit to

[56] *San Diego Gas & Elec. Co. v. Sellers of Mkt. Energy & Ancillary Servs.*, 97 FERC ¶ 61,275 (2001).
[57] *Id.* at 62,196.
[58] *Fed. Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

voluntarily remain in operation,[59] is appropriate in circumstances where a Department of Energy emergency order compels the unit's operation. It is also unclear how, if at all, OATT Part V, Section 118, which requires reimbursement of some Project Investment payments if an RMR unit stays in operation beyond the completion date of transmission upgrades that alleviate the reliability impact resulting from the unit's deactivation, would apply in the case of a Section 202(c) order with a decidedly more ambiguous basis for retaining the unit. In short, the Deactivation Avoidable Cost Credit ("DACC") formula rate cannot be assumed just and reasonable when applied in the context of a Section 202(c) order.

Moreover, PJM indicates that Constellation will be compensated using the DACC formula rate methodology, but "with refinements to ensure recovery of incurred costs including, but not limited to, the Eddystone Units' maintenance and necessary repairs."[60] PJM's filing does not further describe these refinements, give a sense of the magnitude of the incurred costs, or hint at what those costs may include beyond "maintenance and necessary repairs." It is far from clear, based on PJM's description, that the Eddystone compensation arrangement will remain within the bounds of the DACC formula rate methodology.

ii. Cost Allocation and the Calculation of Costs Are Both Aspects of Establishing a Just and Reasonable "Rate."

PJM's extraordinary reading of Section 202(c) would grant the Commission jurisdiction over cost allocation but deny it jurisdiction over the costs themselves. But PJM identifies no precedent for the Commission to have partial jurisdiction over a wholesale rate in this way. In the area of transmission rates, for example, the Commission has authority to review both the costs of service for transmission-owning utilities and the methodologies by which transmission

[59] OATT Part V, Section 114.
[60] Transmittal Letter at 2.

operators like PJM allocate those costs (for facilities with regional benefits), even if those reviews happen in separate stages.[61] Nothing in the Federal Power Act suggests that the method of allocating costs and the method of calculating costs are jurisdictionally independent. Both are aspects of a single wholesale rate that PJM charges to a load-serving entity, which the Federal Power Act places within the Commission's exclusive purview.

Moreover, as discussed above, under longstanding cost causation principles, "FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members."[62] The Commission cannot determine that the benefits of a facility are proportional to its costs if the Commission cannot consider the costs of the facility. This is particularly true in a case such as this one. As discussed in the next section, it appears that certain costs to be recovered may need to be allocated to different groups of customers; unless and until the Commission has a more robust record on these issues, it cannot approve any allocation of costs in a nonarbitrary manner.

A natural reading of the Federal Power Act avoids that issue altogether. By interpreting the FPA to mean what it says—that the Commission's has authority over *all* wholesale rates and charges—the Commission need not consider whether and how it can review one element of a rate (cost allocation) but not the other (the calculation of costs).

[61] *See, e.g., PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,094, at PP 3, 43 (2025) (describing PJM tariff provisions relating to allocation of costs under the Regional Transmission Expansion Plan, noting that challenges to costs of specific facilities may be raised with the Commission).
[62] *Illinois Com. Comm'n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009).

iii. Numerous Parties Affected by the Order Have Not Agreed to PJM's and Constellation's Cost Methodology for Eddystone.

PJM's reading of Section 202(c) also creates a practical problem for the Commission. If Section 202(c) exempts "parties affected by" a Section 202(c) order from the Commission's authority when those parties reach agreement on compensation, the Commission will have an obligation to ensure that *all* of the parties affected by an order have in fact reached agreement. The instant case shows why that exercise could be difficult if not impossible.

Here, PJM assumes that Constellation and PJM are the only parties affected by a Section 202(c) Order. But PJM's Filing indicates otherwise. PJM itself recognizes that it is proposing "passthrough charges" that load-serving entities will ultimately have to pay.[63] Should the Commission accept PJM's cost allocation proposal, those load-serving entities would constitute parties "affected by" the Order under the plain meaning of that phrase—indeed they would face more direct financial effects than PJM itself. Yet those parties are not included in the agreement between Constellation and PJM regarding Eddystone's costs. Complicating matters further, PJM could change the scope of the parties affected by the 202(c) Order by withdrawing its cost allocation proposal and filing a new one assigning costs to (for example) the load-serving entities receiving exports from the PJM region while Eddystone is operating.

It is unlikely that Congress intended to place such great importance on the phrase "parties affected by." By reading the Federal Power Act, consistent with seventy years of precedent, to mean that the Commission has authority over *all* wholesale rates and charges, the Commission obviates the need to precisely determine the parties affected by a Section 202(c) order. If the Commission is unsure whether every party affected by an order has signed on to a compensation agreement, it can provide an opportunity for other affected parties to provide comments on the

[63] Transmittal Letter at 22 n.75 (citing *PUC of Cal. v. FERC*, 988 F.2d 154, 162 (D.C. Cir. 1993)).

proposed charge. And the Commission can ultimately decide for itself whether the rate is just and reasonable, just as it does with rates and charges established through other mechanisms.

III. CONCLUSION

The Commission must reject PJM's filing. PJM and the Department have not provided any evidence that PJM ratepayers in all 13 PJM states and D.C. will materially benefit from Eddystone's continued operation. Allocating Eddystone's costs to those ratepayers on this record would violate Section 202(c)'s just and reasonable standard.

Respectfully submitted, Dated: July 7, 2025

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