UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection LLC Docket Nos. EL23-19

ER23-729

**Protest of Public Citizen, Inc.**

 Our protest makes three requests: (1) that the Commission set PJM’s auction results for hearing and establish a refund effective date, per 16 USC § 824e; (2) determine as part of that hearing whether market participants in Delmarva South engaged in intentional capacity withholding; and (3) modify PJM’s tariff requiring capacity auction results be filed as a stand-alone Section 205 rate filing subject to public notice, inspection and protest.

In these dual Section 205 and Section 206 proceedings, PJM Interconnection LLC admits that its annual capacity auction resulted in unjust and unreasonable rates.[[1]](#footnote-1) PJM’s Section 205 filing suggests that the unjust and unreasonable outcome of the capacity auction is the result of market manipulation―in the form of intentional capacity withholding―in the Delmarva Power & Light South Locational Deliverability Area, where PJM estimates prices are four times higher than they should be (at page 2).

Since PJM acknowledges that the auction prices are not just and reasonable, the Commission must set this matter for hearing and establish a refund effective date, per 16 USC § 824e. Setting the matter for hearing and subjecting the capacity auction to refunds is the statutorily appropriate path for the Commission to pursue, rather than PJM’s proposed “do over” which does not appear to be permitted by its tariff. Subjecting the auction results to a hearing with refund authority will protect consumers and ensure accountability for any generators that engaged in capacity withholding.

 NRG Energy’s generation assets in Delmarva South―600 MW divvied between its coal-fired Indian River and its oil-fueled Vienna facilities―should be noted as part of any hearing under Section 206, as it appears to be a pivotal supplier.

 PJM’s admission that its capacity auction produced unjust and unreasonable rates must compel changes to its tariff requiring future capacity auction results be filed as a stand-alone rate filing under Section 205 of the Federal Power Act. Precedent exists: the Commission accepted the requirement that ISO-NE capacity auction results be filed as a stand-alone Section 205 rate filing beginning in 2007.[[2]](#footnote-2) Amending PJM’s tariff to require capacity auction results to be filed as a Section 205 rate filing will ensure that rates cannot go into effect until the they have been noticed for public inspection and opportunity for comment or protest. Section III.13.8.2 of the ISO-NE tariff states: “As soon as practicable after the Forward Capacity Auction is complete, the ISO shall file the results of that Forward Capacity Auction with the Commission pursuant to Section 205 of the Federal Power Act . . . [and] shall also include documentation regarding the competitiveness of the Forward Capacity Auction”.[[3]](#footnote-3) Structuring PJM’s capacity auction results as a stand-alone Section 205 filing will protect consumers from the unjust and unreasonable rates threatened by PJM’s capacity auction mismanagement.

 In Conclusion: the Commission must set this matter for hearing and establish a refund effective date, per 16 USC § 824e; determine as part of that hearing whether market participants in Delmarva South engaged in intentional capacity withholding; and improve PJM’s tariff by requiring capacity auction results to be filed as a stand-alone Section 205 rate filing subject to public notice, inspection and protest.

 Respectfully submitted,

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1. At page 1 of the filing under Section 206 (EL23-19), and at page 2 of the Section 205 proceeding (ER23-729). [↑](#footnote-ref-1)
2. June 6, 2007 *Order Accepting Market Rules*, Docket No. ER07-547, https://elibrary.ferc.gov/eLibrary/filedownload?fileid=01CFD702-66E2-5005-8110-C31FAFC91712 [↑](#footnote-ref-2)
3. www.iso-ne.com/regulatory/tariff/sect\_3/mr1\_sec\_13-14.pdf [↑](#footnote-ref-3)