UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Monongahela Power Company,

Complainant,

v. Docket No. EL27-3-000

PJM Interconnection, L.L.C.,

Respondent.

INTERVENOR STATE OF WEST VIRGINIA'S RESPONSE TO PJM'S MOTION TO DISMISS AND MOTION FOR LEAVE TO RESPOND TO PJM'S ANSWER

PJM failed to comply with its own tariff. It hardly argues otherwise. Instead, PJM claims it has emergency powers that excuse tariff violations—and even review of those violations—if it (incorrectly) declares an emergency. In other words, in PJM's telling, a clause limiting its liability for dispatch mistakes puts a week-long, 50,000-megawatt program beyond review, so long as PJM calls the program "scheduling." That's wrong. PJM can't immunize itself from suit or this Commission's review by simply relabeling what it did. The Commission's complaint procedures exist for circumstances just like this.

Still, PJM asks the Commission to end this case before it starts. It recasts the Complaint as a utility's quarrel with its bill, reads a liability-limitation clause as a bar on Commission review, treats Mon Power's need for discovery as a confession, and invokes the filed-rate doctrine as if it protected the party that violated the filed tariff. None of that holds up. And PJM's own pleading proves the point: it disputes the facts the Complaint puts at issue. That kind of factual disagreement justifies at least a hearing.

Of course, Mon Power doesn't have all the evidence it needs at this point. PJM has the evidence. That's why discovery is necessary. Neither the Federal Power Act nor Rule 206 requires a complainant to prove facts that only the respondent controls. A complainant must identify the challenged action, explain the legal violation, quantify the burden in good faith, supply the supporting materials within its reach, and request appropriate relief. 18 C.F.R. § 385.206(b); 16 U.S.C. §§ 824e, 825e, 825h. Mon Power did all that. Compl. at 53–58. And while PJM warns that Mon Power's request has "no limiting principle," PJM Mot. at 33, Rule 206 *is* the limiting principle. The Commission shouldn't worry that allowing a little inquiry into one week of one program and one small part of a tariff will throw open the floodgates. The Commission should instead deny PJM's motion to dismiss and permit discovery.[*]

I. PJM's "billing dispute" framing ignores what is at stake for West Virginia.

PJM says Mon Power is simply unhappy with its bill. PJM Mot. at 33. That dismissive description omits the central point. West Virginia is a cost-of-service State. So absent relief, Mon Power's estimated $145 million loss may well end up imposed on West Virginia families and businesses through the annual ENEC proceeding. As the West Virginia Public Service Commission has told this Commission, the net cost of PJM market participation is "passed on directly to retail customers." Comments of the Pub. Serv. Comm'n of W. Va. at 2 (Oct. 26, 2026). And the Federal Power Act leaves state regulators little room to second-guess costs incurred under a Commission-jurisdictional tariff. *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 966 (1986); *Entergy La., Inc. v. La. Pub. Serv. Comm'n*, 539 U.S. 39, 47–50 (2003). This

[*] PJM styled its filing a "Motion to Dismiss and Answer." The State may answer the motion as of right. 18 C.F.R. § 385.213(a)(3). To the extent this response also addresses PJM's answer, the State asks leave to file it. *See id.* § 385.213(a)(2). It corrects PJM's account of the record and will help the Commission decide whether a hearing is needed.

proceeding is the only place West Virginians can test PJM's conduct. Comments of the State of West Virginia ("State Comments") at 7–9.

The State's interest is also sovereign and quasi-sovereign. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982). Fort Martin and Harrison are West Virginia plants burning West Virginia coal, and the Legislature has said such plants should be encouraged to run at maximum reasonable output. W. VA. CODE § 24-1-1d(8), (12). Actions like PJM's will keep that from happening, but PJM never addresses that injury. It warns instead that relief would shift money to other customers. But PJM itself calls Winter Storm Fern a "system-wide emergency" and says it acted for the whole system. PJM Mot. at 3, 33. If so, the cost of that choice shouldn't stay with the one zone that happened to sit downstream of a constraint.

II. Section 1.8.2 does not bar this Complaint.

PJM's lead argument is that Operating Agreement Schedule 1, section 1.8.2 sends disputes over "selection, scheduling or dispatch" to PJM and forecloses any retroactive relief. PJM Mot. at 11–12. The text doesn't say that. Section 1.8.2(a) provides that complaints about such determinations "shall be brought to the attention of" PJM. PJM Op. Agreement Sched. 1, § 1.8.2(a). Mon Power did exactly that, filing a billing dispute in March 2026. PJM Mot. at 11 n.51. Nothing in that notice provision strips the Commission of its statutory authority to decide whether PJM followed its tariff, 16 U.S.C. §§ 824e, 825h, or otherwise calls PJM the exclusive venue. And that agreement certainly doesn't bind the State, which is not a Market Participant and has no governance role in PJM. State Comments at 8. Even PJM describes section 1.8.2 as merely a bargain among "PJM and the signatories to the Operating Agreement." PJM Mot. at 13.

Section 1.8.2(d) is also no obstacle. It bars "damages, opportunity costs, or other form of reimbursement" for losses from a "mistake, error or other fault" in selecting, scheduling, or

dispatching resources. PJM Op. Agreement Sched. 1, § 1.8.2(d). But PJM's quotation starts mid-sentence. The provision opens with a carve-out: it applies "[s]ubject to the right of a Market Participant to obtain correction of accounting or billing errors." *Id*. And PJM itself describes the Complaint as seeking "correction of settlement consequences." PJM Mot. at 15. Mon Power isn't seeking damages for an operator's misjudgment. It asks the Commission to decide whether PJM acted within the authority its tariff confers and, if not, to correct the resulting settlements. Yet on PJM's reading, any departure from the tariff would be unreviewable so long as PJM labeled it a scheduling decision. That approach would make FPA sections 205 and 206 dead letters. And even if that extreme view were right, much of the Complaint is far afield from even the broadest understanding of scheduling. It instead asks whether PJM ran a rate-affecting program under rules it never filed, and whether it left the resulting costs on the wrong customers. Those issues present rate questions, not dispatch calls.

PJM's authorities confirm the point. *PPL EnergyPlus v. PJM Interconnection, LLC* rejected a generator's claim that PJM should have called its unit sooner during a single-line overload, because the parties had agreed not to unravel real-time dispatch decisions that "cannot be reversed." 117 FERC ¶ 61,338, at P 33 (2006). Mon Power's complaint doesn't concern real-time decisions. It involves advance commitments made up to a week before the Day-Ahead Market. And the relief sought here doesn't depend on reconstructing a hypothetical dispatch. What's more, the same order confirms that section 1.8.2 doesn't close the Commission's doors, expressly noting how "[a]ny party may file a complaint under section 206 and/or section 306 of the FPA if PJM fails to follow its dispatch procedures." *Id.* at n.31. The Commission then went on to decide PPL's rate claims on the merits, "disagree[ing] that section 1.8.2 operates as a bar regarding the rates applicable to" the units. *Id.* at P 35. It even found a tariff violation without

suggesting section 1.8.2 stood in the way. *Id.* at P 51. At most, then, section 1.8.2 speaks to the remedy for a dispatch error. A remedy comes after a violation is found, not before discovery begins.

The argument premised on Order No. 2000 fares no better: it protects redispatch authority to "prevent or manage emergency situations" through "immediate manual action," and only "if necessary." Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809, 874-75 (Jan. 6, 2000). A seven-day, 50,000-megawatt schedule is neither immediate nor exempt from the necessity requirement. And section 1.10.8(e)'s deadlines govern PJM's correction of erroneous posted results. PJM Mot. at 13–14 n.63; PJM Op. Agreement Sched. 1, § 1.10.8(e). The Complaint alleges no posting error.

III. PJM's answer confirms discovery and a hearing are necessary to resolve factual disputes.

PJM doesn't agree with Mon Power's factual recounting. It disputes facts about its "necessity" finding, alleged fuel discrimination, and forecasting, and it raises questions about transmission outages. Discovery is the means to ferret out the facts, and a hearing is the means to resolve factual disputes. Even the Public Service Commission, which takes no side on the merits, says these questions "should not be resolved on the basis of incomplete factual submissions or competing assertions that have not been tested through an appropriate evidentiary process." *See* Comments of the Pub. Serv. Comm'n of W. Va. at 3.

Start with PJM's "necessity" finding. PJM says section 1.10.1(d) grants broad discretion because it speaks of what is "necessary." PJM Mot. at 18. But "as necessary in order to alleviate or mitigate such Emergency" is a limit, not a license. PJM Op. Agreement Sched. 1, § 1.10.1(d); *see, e.g.*, *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 389 (1999) (condemning the Federal Communications Commission for too readily deferring to market entrant's determination of what

was "necessary" to access proprietary network elements). Tariff provisions are read to give effect to every term, *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 828–29 (D.C. Cir. 2021), and general discretion is not "carte blanche authority" to disregard the specific limits around it, *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 400 (3d Cir. 2024). PJM's contrary authority is *Loper Bright*, which in turn cites *Michigan v. EPA*. PJM Mot. at 18 & n.82. But *Michigan* held that an agency told to act as "appropriate and necessary" could not ignore cost: "One would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits." 576 U.S. 743, 752 (2015). And those cases ask what Congress delegated to an *agency*. Nothing in them hands a *regulated utility* the same latitude over its own tariff. Further, PJM's stated reason was "Fuel Uncertainty," not a fuel shortage. State Comments at 10–11. PJM doesn't say otherwise. Its answer identifies no shortage, only "supply uncertainty due to potential interruptions to gas supply chains." PJM Mot. at 8.

PJM's treatment of Footnote 10 is no better. PJM told this Commission in 2025 that weather-risk resources pre-scheduled before the Day-Ahead Market would receive a Day-Ahead commitment "only" if they were part of the least-cost solution. PJM Mot. at 7 (quoting PJM Transmittal Letter at 5 n.10). PJM now says the footnote merely means it may later commit those units manually and pay uplift. *Id.* at 21. That reading erases "only." And PJM admits that such manual commitments "did" occur "in this case." *Id.* Which units, how many, and why each was necessary are unit-level questions only PJM can answer. So too for section 1.10.1A(f), which PJM cites for a limit on make-whole payments for commitment hours beyond start-up and notification times. *Id.* at 3–4; PJM Op. Agreement Sched. 1, § 1.10.1A(f). Roughly 99% of the $798 million in uplift went to gas units. Compl. at 38-39. Whether PJM honored that limit can't be answered from the public record. Finally, PJM's Order No. 844 reporting shows only that PJM reports uplift

after the fact. PJM Mot. at 4–5, 17–18. It is no substitute for filing rate-affecting rules *before* the fact. *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 810–11 (D.C. Cir. 2007).

To dispute Mon Power's fuel discrimination claim, PJM attaches footprint-wide data showing coal's share of generation rose during the storm. PJM Mot. at 22–24 & Attach. A. It may be true that coal ran more across PJM because load hit record levels. But the question is whether PJM's gas-only commitments left Fort Martin and Harrison pinned at minimum output. PJM concedes those units "were running, they were just dispatched down due to congestion." *Id.* at 22. That's the point. And it favors Mon Power's allegations. PJM's reliance on the "very low LMPs" at those plants to validate the dispatch is circular. The low prices are the injury. PJM's fuel-security rationale may justify some difference in treatment, as the State has acknowledged. State Comments at 15. Whether it justifies this scale, PJM's gas-only focus, make-whole certainty for gas, and idled cheaper coal is a question of fact. A national estimate of coal stockpile days says nothing about these units.

What's more, PJM says planned outages at Bedington and Black Oak were the most significant congestion driver. PJM Mot. at 27–29. Neither Mon Power nor the State deny the outages. But they pre-dated and outlasted the storm, while the price divergence tracked the window when PJM was advance-scheduling gas. Compl. at 36 n.106; State Comments at 6 n.2. PJM's account also cuts the other way: it approved those outages marked "Congestion Expected," PJM Mot. at 28–29, yet committed more than 50,000 MW of gas daily, with nothing in the record showing it assessed the effect on that corridor. And PJM asks the Commission to credit its description of eDART tickets it declined to file. *Id.* at 28 n.113. The Commission can't rest on a regulated entity's say-so about its own conduct. *Affirmed Energy, LLC v. FERC*, 166 F.4th 1070,

1083 (D.C. Cir. 2026). Apportioning responsibility requires PJM's constraint, shadow-price, and flow data.

And to rebut Mon Power's forecasting complaint, PJM invokes hindsight. PJM Mot. at 29–31. But Good Utility Practice looks to "the facts known at the time," PJM Op. Agreement § 1, and the necessity requirement didn't expire with PJM's first forecast. PJM told Commission staff that closure decisions came hours after forecasts were completed. FERC Staff Report at 17. That timeframe may explain a day-ahead forecast; it doesn't explain a seven-day schedule. PJM answers that it couldn't release units without risking reliability later in a twelve-day event. PJM Mot. at 26. Perhaps. But that is an operational judgment requiring evidence: which units, which days, and what analysis supported it. Staff's general praise of PJM's storm planning, *id.* at 31, is not an adjudication of tariff compliance.

IV. The filed-rate doctrine does not shield PJM from retrospective relief.

PJM insists that *Old Dominion* and *Oklahoma Gas* bar any retroactive relief. PJM Mot. at 13, 17. Those cases hold that the Commission can't waive a filed tariff or adjust a rate on equitable grounds. In *Old Dominion*, the tariff itself capped offers, and the utility sought to recover costs the tariff disallowed. *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1230–31 (D.C. Cir. 2018). Mon Power seeks the opposite: enforcement of the tariff as filed. Compl. at 53. The Commission may order refunds when it finds a filed-tariff violation. *Consol. Edison Co. of N.Y. v. FERC*, 347 F.3d 964, 967 (D.C. Cir. 2003); 16 U.S.C. § 825h. PJM's point that remedies are discretionary, PJM Mot. at 17 n.76, is a reason to defer the remedy question until a violation is found, not to dismiss.

PJM's third-party-burden objection is premature and misunderstands the remedy. Mon Power has not asked for a market rerun. Compl. at 53. A reallocation needn't be one. *Verso Corp.*

v. FERC, 898 F.3d 1, 10–12 (D.C. Cir. 2018) (upholding reallocation of reliability costs through refunds and offsetting surcharges because the aggregate rate was unchanged). PJM asks why Mon Power's customers' bills matter more than other customers' money. PJM Mot. at 34–35. This is another obfuscation. The tariff says reliability-commitment costs are borne by load-ratio share across the footprint. PJM OATT Att. K-App. § 3.2.3(b)(i)(B). But if PJM's week of gas commitments was a reliability action for the whole system, as PJM insists, the congestion it produced was a cost of that action, too. Cost causation points the same way. *Black Oak Energy, LLC v. FERC*, 725 F.3d 230, 237 (D.C. Cir. 2013) ("[A]ll approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them." (cleaned up)). And unlike in *Old Dominion*, where customers had no notice the costs could be recovered, *Old Dominion Elec. Coop.*, 892 F.3d at 1230–31, every PJM load is on notice of how reliability costs are spread. The State has acknowledged that other States' ratepayers would bear a share. State Comments at 18–19. That is the bargain the tariff already strikes.

V. Fast-track processing remains warranted.

PJM says Mon Power waited too long and failed to justify fast-track processing. PJM Mot. at 35–37. But PJM itself says it supplied data to Mon Power as late as July 2026, *id.* at 11 n.51. So Mon Power filed within eleven weeks of exhausting that process. The charges are assessed, and West Virginia customers' burden accrues until the Commission acts. 18 C.F.R. § 385.206(h). PJM can't argue both that discovery will take too long and that Mon Power shouldn't get speedy process. At a minimum, the Commission should expedite threshold discovery and set a firm schedule.

VI. The Commission should require filed rules before the next storm.

PJM tells Mon Power to take its ideas to the stakeholder process. PJM Mot. at 32–33. But States have no governance role there. State Comments at 8. Section 205(d) is how States see rate-affecting rules before they take effect. PJM admits it keeps the details of section 1.10.1(d) in its Manuals and may "adjust" them "as necessary." PJM Mot. at 18–19. That is the unfiled, adjustable practice the rule of reason forbids. *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985); *KeySpan*, 474 F.3d at 810–11. PJM's pending reforms address how advance-scheduled resources are priced, not how they are selected, whether selection must be fuel-neutral, how commitments are updated when forecasts fail, or how congestion costs are allocated. State Comments at 18–19. The Public Service Commission has asked the Commission to consider tariff modifications, too. The Commission should take those questions up, here or in a separate proceeding, before the next storm.

CONCLUSION

The Commission should deny PJM's motion to dismiss, set the Complaint for hearing and settlement procedures with targeted discovery, and grant fast-track treatment or expedited threshold discovery.

Dated: November 10, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the "INTERVENOR STATE OF WEST VIRGINIA'S RESPONSE TO PJM'S MOTION TO DISMISS AND MOTION FOR LEAVE TO RESPOND TO PJM'S ANSWER" in FERC Docket No. EL27-3-000 has been served in accordance with 18 C.F.R. § 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: November 10, 2026

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