

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

**PJM Interconnection, L.L.C. : Docket No. ER19-2915-000**

**MOTION FOR LEAVE TO ANSWER  
AND ANSWER OF PJM INTERCONNECTION, L.L.C.**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure<sup>1</sup> of the Federal Energy Regulatory Commission (“Commission” or “FERC”), PJM Interconnection, L.L.C. (“PJM”) respectfully requests leave to answer<sup>2</sup> and answers certain comments<sup>3</sup> and protests<sup>4</sup> to PJM’s September 30, 2019 filing<sup>5</sup> submitted in this docket relating to stakeholder proposed revisions to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), Schedule 6, section 1.5.8(c)(2) and 1.5.8(e) (the “stakeholder proposal”).

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<sup>1</sup> 18 C.F.R. sections 385.212 and .213 (2018).

<sup>2</sup> Although Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure does not allow for answers to protests by right, the Commission regularly accepts otherwise impermissible answers where, as here, they will assist the Commission’s understanding of the record and its decision-making. *See e.g., Southwest Power Pool, Inc.*, 167 FERC ¶ 61,275 at P 38 (Jun. 28, 2019); *California Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,003 at P 17 (July 2, 2017); *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133 at P 12 (Feb. 3, 2017); *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,152 at P 17 (Nov. 29, 2016).

<sup>3</sup> *PJM Interconnection, L.L.C.*, Comments of the New Jersey Board of Public Utilities, Docket No. ER19-2915-000 (Oct. 21, 2019) (“NJBPU Comments”); *PJM Interconnection, L.L.C.*, Comments of LS Power Transmission Holdings II, LLC, Docket No. ER19-2915-000 (Oct. 21, 2019) (“LS Power Comments”).

<sup>4</sup> *PJM Interconnection, L.L.C.*, Protest of PPL Electric Utilities Corporation and the Dayton Power & Light Company, Docket No. ER19-2915-000 (Oct. 21, 2019) (“PPL and Dayton Protest”); *PJM Interconnection, L.L.C.*, Protest of Public Service Electric and Gas Company, Docket No. ER19-2915-000 (Oct. 21, 2019) (“PSEG Protest”); *PJM Interconnection, L.L.C.*, Comments and Conditional Protest of the Indicated PJM Transmission Owners, Docket Nos. ER19-2915-000 (Oct. 21, 2019) (“PJM TO Protest”); *PJM Interconnection, L.L.C.*, Styled as “Comments” of America Electric Power Service Corporation, Docket No. ER19-2915-000 (Oct. 21, 2019) (“AEP Comments”).

<sup>5</sup> *PJM Interconnection, L.L.C.*, Docket No. ER19-2915-000 (September 30, 2019) (“Filing”).

## I. ANSWER

### A. *The Stakeholder Proposal Adds Additional Language to the Operating Agreement Relating to PJM’s Existing Authority as System Planner to Consider Cost-Effectiveness and Cost Commitments in the Competitive Proposal Window Process.*

In the Filing, PJM explained that even without the stakeholder proposal, Operating Agreement, Schedule 6, sections 1.5.8(c)(2) and 1.5.8(e) permit transmission project sponsors to voluntarily submit cost commitment proposals during PJM’s competitive proposal window process. Further, the Operating Agreement already gives PJM the authority to consider multiple criteria, including the “cost-effectiveness” of project proposals, when deciding what proposals to recommend for approval and inclusion in the PJM Regional Transmission Expansion Plan (“RTEP”). Consistent with these existing Operating Agreement provisions, to date under PJM’s RTEP planning processes, PJM has considered more than 850 project proposals (approximately 18% of which have included some level of voluntarily-submitted cost commitment), and two of the three PJM Board of Managers-approved projects with a Commission-accepted Designated Entity Agreement reflect some form of cost commitment.<sup>6</sup> Thus, independent of the stakeholder proposal at issue in the Filing, PJM’s processes already include a consideration of “cost-effectiveness” and PJM already recognizes the potential value of voluntarily-submitted cost commitments.

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<sup>6</sup> See Artificial Island b2633 Designated Entity Agreement, Schedule E (detailing a project that has a total cost cap, with an escalation factor, and some exclusion language), accessible at: <https://www.pjm.com/-/media/planning/rtep-dev/expan-plan-process/ferc-order-1000/rtep-proposal-windows/b2633-artificial-island-dea.ashx?la=en>; and AP South (Project 9A) Designated Entity Agreement, Schedule E (detailing a project that has a cap on the incentive over a cost cap), accessible at: <https://www.pjm.com/-/media/planning/rtep-dev/expan-plan-process/ferc-order-1000/rtep-proposal-windows/2014-2015-b2743-and-b2752-ap-south-congestion-improvement-project-dea.ashx?la=en>.

Some of the comments and protests speculate<sup>7</sup> that the stakeholder proposal is in some degree of tension with the PJM Open Access Transmission Tariff (the “Tariff”), the Consolidated Transmission Owners Agreement (the “CTOA”), the *Atlantic City*<sup>8</sup> precedent, or the Commission’s role as rate regulator. Under today’s Operating Agreement or the Operating Agreement inclusive of the stakeholder proposal (if approved), it remains the project proposer’s exclusive voluntary right to choose whether (or not) to submit a level of cost commitment.<sup>9</sup> Under the stakeholder proposal, there is no language stating that a project proposal is categorically disqualified from consideration if the proposing entity decides for itself to decline to submit a cost commitment. It is not possible to square a voluntary decision by a project proposer to exercise its right to submit (or not) a cost commitment with the claim that such a voluntary decision amounts to an infringement of reserved and exclusive right over matters of transmission rates and rate design.

Moreover, any exercise by PJM of its already-existing, Commission-approved authority to consider a voluntarily-submitted cost commitment among a variety of other criteria<sup>10</sup> is separate and apart from the determinations this Commission would make in a Federal Power Act Section 205 rate proceeding. In sum, the existing Operating Agreement language, the Filing, and

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<sup>7</sup> See PJM TO Protest at 6-11 (“the proposed Schedule 6 changes could infringe on the rights of PJM transmission owners and nonincumbent transmission developers” (emphasis added)); AEP Comments at 2 (“PJM’s filing also raises the concern that the proposed Schedule 6 changes could infringe on the rights of PJM transmission owners and non-incumbent transmission developers” (emphasis added)); PSEG Protest at 7 (stating that it “appears” the stakeholder proposal calls for PJM to “step[] into the Commission’s shoes”).

<sup>8</sup> *Atlantic City Electric Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002).

<sup>9</sup> See Operating Agreement, Schedule 6, section 1.5.8(c)(2) (“any cost commitment the entity may wish to submit” (emphasis added)); Stakeholder Proposal at 1.5.8(c)(2) (“any binding cost commitment proposal the entity may wish to submit; . . . To the extent that an entity submits a cost containment proposal . . . PJM may not alter the requirements for proposal submission to require the submission of a binding cost containment proposal, in whole or in part, or otherwise mandate or unilaterally alter the terms of any such proposal or the requirements for proposal submission, the submission of any such proposals at all times remaining voluntary.” (emphasis added)).

<sup>10</sup> See Operating Agreement, Schedule 6, section 1.5.8(e).

the stakeholder proposal<sup>11</sup> do not suggest that PJM is now, or intends in the future if the stakeholder proposal is approved, to mandate the submission of cost commitments in project proposals tendered during competitive proposal windows or to act as the rate regulator.

***B. The Stakeholder Proposal Is Sufficiently Specific and Its Detail is Consistent with the Other Criteria that PJM Considers.***

PJM's experience reviewing and considering voluntarily-submitted cost commitments rebuts claims by some of the commenters/protesters<sup>12</sup> that the stakeholder proposal lacks sufficient specificity to be approved. In addition, there is ongoing activity in the PJM stakeholder process to develop a comparative framework to implement the stakeholder proposal.<sup>13</sup> Regardless of whether the stakeholder proposal is approved, as noted above, PJM has considered and will continue to consider voluntarily-submitted cost commitments when included in project proposals.<sup>14</sup> As PJM has stated before, the stakeholder proposal would simply add additional language to the Operating Agreement regarding PJM's consideration of one factor in its decisional calculus. The call by some commenters and protesters for even more detail beyond what is included in the stakeholder proposal and what is being finalized in the PJM Manual is, therefore, unnecessary for two reasons. First, if approved, PJM should be afforded the opportunity to implement the stakeholder proposal with the flexibility necessary to analyze

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<sup>11</sup> In fact, the stakeholder proposal states the exact opposite. Stakeholder Proposal at 1.5.8(e) ("In evaluating any cost, ROE and/or capital structure proposal, PJM is not making a determination that the cost, ROE or capital structure results in just and reasonable rates, which shall be addressed in the required rate filing with the FERC.").

<sup>12</sup> PJM TO Protest at 4-6; PSEG Protest at 4-6; PPL and Dayton Protest at 3-4. *But see* AEP Comments at 3 & n.3 ("AEP understands that PJM considers such [cost] commitments as part of its sponsorship model, which AEP strongly supports" and further describing the stakeholder proposal as "provid[ing] for increased evaluation clarity and transparency").

<sup>13</sup> *See, e.g.*, October 31, 2019 Markets & Reliability Committee meeting, Agenda Item 9D, available at: <https://www.pjm.com/committees-and-groups/committees/mrc.aspx>.

<sup>14</sup> In this docket and at this late date, the PSEG Protest (at 4-5) cannot challenge PJM's receipt of "cost commitment" information for use in evaluating a project proposal's "cost-effectiveness" in the PJM RTEP processes. *See* Operating Agreement, Schedule 6, sections 1.5.8(c) and 1.5.8(e).

the diverse array of project proposals and cost commitments submitted pursuant to PJM's sponsorship model, and revisit and refine its processes in its Manuals without necessarily seeking further revisions to the Operating Agreement.<sup>15</sup> Second, to require additional detail above and beyond what is set forth in the stakeholder proposal would result in an imbalance in the level of detail in the Operating Agreement around PJM's consideration of voluntarily-submitted cost commitments when compared to the sufficiently-definite, Commission-approved level of detail already in place to describe the other criteria PJM considers when reviewing project proposals submitted in competitive proposal windows.

***C. The Filing Was Made Consistent with the Operating Agreement's Requirements.***

Finally, the Commission should dismiss the PPL and Dayton Protest's assertion that the stakeholder proposal was "never lawfully adopted by the PJM Members Committee under the Operating Agreement and as such PJM is not authorized to file them under Section 205."<sup>16</sup> The PPL and Dayton Protest, in support of its argument, cites to Operating Agreement, section 18.6(a), which provides in pertinent part that Schedules to the Operating Agreement: "may be amended . . . only upon: (i) submission of the proposed amendment to the PJM Board for its review and comments; [and] (ii) approval of the amendment or new Schedule by the Members Committee, after consideration of the comments of the PJM Board[.]"<sup>17</sup> The PPL and Dayton Protest claims that "the PJM Board of Managers had not been afforded an opportunity to provide

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<sup>15</sup> The PSEG Protest recognizes that "revisions to the Operating Agreement may not ultimately include every detail" (PSEG Protest at 4), confirming that the non-exhaustive list of potential scenarios it cites (at 5) is not "realistically susceptible of specification" such that further development in the PJM Manuals is appropriate. *See City of Cleveland, Ohio v. F.E.R.C.*, 773 F.2d 1368, 1376 (D.C. Cir. 1985); *accord* NJBPU Comments at 2-3 (noting that the stakeholder proposal's provision "for stakeholder review through the TEAC, and statement of general principles set out in the OA, ensures appropriate safeguards are in place while simultaneously allowing for revisions to the comparative analysis as improvements are recognized by the PJM stakeholders.").

<sup>16</sup> PPL and Dayton Protest at 1.

<sup>17</sup> Operating Agreement, section 18.6(a).

comments on the Cost Containment Provisions as required by Section 18.6 of the PJM Operating Agreement.”<sup>18</sup> The arguments in the PPL and Dayton Protest are contrary to fact and law and, as such, the Commission need not second guess the PJM membership’s determination in this matter.

The stakeholder proposal was shared with the PJM Board for its review and comment through, among other things, public posting of the various iterations of the stakeholder materials on the PJM website.<sup>19</sup> Three Board members were in attendance before the Members Committee approved the stakeholder proposal, and one of those Board members even provided comments at the meeting prior to a vote.<sup>20</sup> PJM legal apprised the Members Committee of all these reasons why PJM complied with Operating Agreement, section 18.6(a), further using words to the effect that: “the Board had [also] engaged on the topic of cost containment in general (not on the specific proposed revision) and provided comments to PJM.”<sup>21</sup> Based upon these facts, the Members Committee Chair rejected a member’s point of order raising precisely the same argument raised in the PPL and Dayton Protest. Tellingly, the Members Committee then voted to support the determination of the Chair and thereby expressed its sentiment that Operating Agreement, section 18.6(a) had, in fact, been complied with under these facts.<sup>22</sup>

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<sup>18</sup> PPL and Dayton Protest at 3.

<sup>19</sup> See PJM Manual 34: PJM Stakeholder Process at sections 15.5 and 15.6 (noting that stakeholder process updates are posted on PJM’s website to “provide documented transparency between the Members and the Board of Managers”); PPL and Dayton Protest, Exhibit 2 at 2; see also May 24, 2018 Markets & Reliability meeting materials and June 21, 2018 Members Committee meeting materials, available at: <https://www.pjm.com/committees-and-groups/committees/mrc.aspx>.

<sup>20</sup> PPL and Dayton Protest, Exhibit 2 at 1-2.

<sup>21</sup> PPL and Dayton Protest, Exhibit 2 at 2.

<sup>22</sup> As the Members Committee meeting minutes indicate, a “motion to sustain the decision of the Chair was **approved** in a sector weighted vote with 4.5 [out of 5.0] in favor” where a sector-weighted vote of only 3.335 was required for approval. PPL and Dayton Protest, Exhibit 2 at 2.

Moreover, the PJM Board’s opportunity to offer “review and comment” on proposed amendments to a governing document cannot and should not be equated with a requirement that proposed amendments to a governing document receive PJM Board approval in advance of filing.<sup>23</sup> The Commission should not second guess the Members Committee’s confirmed satisfaction with the adherence to Operating Agreement, section 18.6(a) in this matter, particularly because there is no record evidence that following a more formal “review and comment” process would have caused a change in the Members Committee vote, or that the lack of a more formal comment process caused any stakeholder to suffer prejudice.

At its heart, the PPL and Dayton Protest seeks to ascribe a significance to the PJM Board’s opportunity for “review and comment” that goes beyond the provision’s intent, which is to keep the PJM Board apprised and engaged in matters of concern to stakeholders. That purpose was undoubtedly satisfied here. Contrary to the PPL and Dayton Protest, Operating Agreement, section 18.6(a) grants discretion to the PJM Board in terms of flexibility in how to review and comment, if at all, on proposed Operating Agreement amendments. The Operating Agreement does not mandate a formalistic process by which the PJM Board must offer its review and comment, nor does the Operating Agreement require the PJM Board to deliver comments in every instance. The Commission need not, and should not, strain to read the Operating Agreement as requiring formalistic review and comments. To do so would cause impracticalities and delays in the PJM stakeholder process by, for example, hamstringing the potential for stakeholders to narrow and compromise on key issues for filing with the Commission before consultation with a quorum of the PJM Board and receiving formal comments in some yet-

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<sup>23</sup> Compare Operating Agreement, section 18.6(a), with Reliability Assurance Agreement, Article 16.4 (“The PJM Office of the Interconnection shall file with FERC any amendment to this Agreement approved by the PJM Board.”). In addition, unlike in Section 205 proceedings to amend the Operating Agreement, the PJM Board has the duty and responsibility to approve certain Section 206 petitions in advance of filing with the Commission. Operating Agreement, section 7.7(vi).

unspecified manner. Accepting such reasoning would also result in the Commission opening its doors to even more collateral attacks on PJM stakeholder process outcomes.

## II. CONCLUSION

WHEREFORE, for all of the reasons stated herein, the Commission should grant PJM's leave to answer, accept PJM's responses, and accept the stakeholder proposal as requested in the Filing.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

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

Dated at Audubon, Pennsylvania this 5th day of November 2019.

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