

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

Neptune Regional Transmission System, LLC)	
and the Long Island Power Authority,)	
Complainants)	
)	
v.)	Docket No. EL21-39-000
)	
PJM Interconnection, L.L.C.,)	
Respondent)	

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

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ PJM Interconnection, L.L.C. (“PJM”) submits this Motion for Leave to Answer and Limited Answer to the comments filed by LSP Transmission Holdings II, LLC and Central Transmission, LLC (collectively, “LS Power”)² in the above-captioned docket. LS Power responds to the December 31, 2020 Complaint filed in this proceeding by Neptune Regional Transmission System (“Neptune”) and the Long Island Power Authority (“LIPA”) (collectively, “Complainants”).³

¹ 18 C.F.R. §§ 385.212 and 385.213 (2020).

² *Neptune Regional Transmission System, LLC, et al., v. PJM Interconnection, L.L.C.*, Comments of LS Transmission Holdings II, LLC and Central Transmission, LLC, Docket No. EL21-39-000 (Feb. 9, 2021) (“LS Power Comments”).

³ *Neptune Regional Transmission System, LLC, et al., v. PJM Interconnection, L.L.C.*, Complaint, Docket No. EL21-39-000 (Dec. 31, 2020) (“Complaint”). Complainants challenge various aspects of the cost allocation methodology for transmission enhancements and expansions included in PJM’s Regional Transmission Expansion Plan (“RTEP”) to address reliability needs, as set forth in Schedule 12 of the PJM Open Access Transmission Tariff (“Tariff”). Specifically, Complainants argue that the continued use of the netting procedure and the one percent *de minimis* rule as applied to the results of the solution-based distribution factor analysis (“DFAX”) is unjust and unreasonable. PJM filed an Answer to the Complaint on February 9, 2021. See *Neptune Regional Transmission System, LLC, et al., v. PJM Interconnection, L.L.C.*, Answer of PJM Interconnection, L.L.C., Docket No. EL21-39-000 (Feb. 9, 2021) (“PJM Answer”).

I. MOTION FOR LEAVE TO ANSWER

PJM respectfully requests leave to file this Limited Answer to address narrow issues set forth in the Comments filed by LS Power.⁴ Although the Commission’s Rules of Practice and Procedure generally do not permit an answer to comments,⁵ the Commission routinely allows such answers when they provide useful or relevant information that will assist the Commission in its decision-making process, clarify the issues, assure a complete record in the proceeding, provide information helpful to the disposition of an issue, and permit the issues to be narrowed.⁶ Here, PJM respectfully requests that the Commission grant this Motion because the Answer will help clarify or correct the record and contribute to an understanding of issues.

II. LS POWER’S ALLEGATIONS ARE UNRELATED TO THIS CASE AND WIDE OF THE MARK

LS Power broadly argues that the *de minimis* rule leads to unjust and unreasonable cost allocations,⁷ that it serves no purpose,⁸ and that the origins of the currently-effective *de minimis* rule are “suspect.”⁹ PJM does not respond to all of the arguments in LS Power’s Comments; rather PJM limits its response to the following points, each of which is a red herring designed to distract

⁴ PJM does not respond to all of the assertions in LS Power’s Comments. PJM’s silence should not be construed as agreement with or acquiescence to any argument in the Comments.

⁵ 18 C.F.R. § 385.213(a)(2) (2020).

⁶ See, e.g., *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co. and Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,057, at P 93 (2012); *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,285 (2010); *Sw. Power Pool, Inc.*, 131 FERC ¶ 61,252, at P 19 (2010), reh’g denied, 137 FERC ¶ 61,075 (2011) (accepting answers that “provided information that assisted us in our decision-making process”); *Duke Energy Ky., Inc.*, 122 FERC ¶ 61,182, at P 25 (2008) (accepting answers in proceeding that “provided information that assisted us in our decision-making process”); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 26 (2008); *PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,083, at P 23 (2007) (answer to protests permitted when it provides information to assist the Commission in its decision-making process); *Morgan Stanley Capital Grp., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017, at 61,036 (2000) (accepting an answer that was “helpful in the development of the record...”).

⁷ See LS Power Comments at 1-10.

⁸ See *id.* at 10-12.

⁹ See *id.* at 12-16.

from the true issues before the Commission in this docket. LS Power's claims are wide of the mark and fail to even explain the relevance of their broad challenges to resolving the issues at hand in this proceeding:

First, LS Power makes several arguments insinuating that because the PJM Transmission Owners have the exclusive and unilateral right to submit filings pursuant to section 205 of the Federal Power Act ("FPA") regarding the establishment and recovery of the Transmission Owners' transmission revenue requirements and the transmission rate design under the PJM Tariff, PJM is not acting independently to ensure that RTEP cost allocation follows principles of cost causation.¹⁰ LS Power completely ignores numerous Court decisions, including the U.S. Court of Appeals decision in *Atlantic City Electric v. FERC*,¹¹ and the subsequent *Atlantic City* Settlement Agreement.¹² LS Power does not explain how the Commission could simply disregard the Court's holdings in *Atlantic City*. By the same token, LS Power does not square its arguments with the

¹⁰ See, e.g., *id.* at 15 ("As an independent RTO, PJM should have a common interest with consumers in its region, and the Commission, to ensure that cost allocation follows basis principles of cost causation. However, because incumbent PJM transmission owners currently claim the exclusive right to set cost allocation policy for future PJM projects, PJM is able to wipe its hands of the problem by asserting that it has nothing to do with setting cost allocation policy all the while maintain a 'common interest' with transmission owners covering that very subject."); *Id.* at 15 ("The Commission must recognize that there is no inherent right for an existing transmission owner to set cost allocation policy in an independent RTO for future projects and that a vast majority of issues emanating from PJM transmission planning arise from PJM's lack of independence regarding cost allocation."); *Id.* at 15 ("LS Power urges the Commission to open a proceeding to explore the issue that created the situation to begin with and explore whether incumbent PJM transmission owners are the appropriate entities to establish the cost allocation for future regionally planned projects to which they have no ownership claim.").

¹¹ *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002), *order on remand*, *Pennsylvania-New Jersey-Maryland Interconnection*, 101 FERC ¶ 61,318 (2002), *subsequent appeal*, 329 F.3d 856 (D.C. Cir. 2003) ("Atlantic City").

¹² See *Pennsylvania-New Jersey-Maryland Interconnection*, 105 FERC ¶ 61,294 (2003), *order on reh'g*, 108 FERC ¶ 61,032 (2004) (PJM) (approving settlement agreement providing that the PJM Transmission Owners pursuant to the joint action provisions of the Consolidated Transmission Owners Agreement ("CTOA") CTOA, section 8.5.1, and subject to an obligation to consult with PJM and the PJM Members Committee pursuant to CTOA, section 7.3.2, shall have the exclusive and unilateral right to make such section 205 filings). See also, PJM Tariff, sections 9.1 (memorializing the terms of the *Atlantic City* settlement agreement).

Transmission Owners' cost allocation methodology,¹³ submitted in compliance with Order No. 1000¹⁴ and accepted by the Commission in Docket Nos. ER13-90 and ER13-198,¹⁵ which expressly incorporated, *inter alia*, the PJM Transmission Owners' exclusive and unilateral right to submit FPA section 205 filings regarding the PJM Regional Rate Design. LS Power also ignores the Commission's more recent orders affirming (i) the justness and reasonableness of the solution-based DFAX methodology as proposed by the Transmission Owners, and (ii) findings that PJM correctly applied the cost assignments for the Tariff Schedule 12 cost allocation methodologies.¹⁶ LS Power's attempt to call PJM's independence into question, while failing to acknowledge the PJM Tariff¹⁷ and CTOA provisions¹⁸ that memorialize the long-standing Court and Commission precedent, is not only misleading and inaccurate, it is outside the scope of this proceeding.

Second, LS Power's arguments regarding the existence of a Confidentiality and Common Interest Agreement ("CCIA") between PJM and the PJM Transmission Owners are both irrelevant

¹³ See *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128, at P 262 (2014) ("Under Schedule 12, the costs of all Required Transmission Enhancements are recovered through charges assessed to customers taking Network Integration Transmission Service, which is a service a transmission owner provides using its own assets. Therefore, *the right to make a section 205 filing to change the cost allocation method for Required Transmission Enhancements in PJM is appropriately the exclusive right of PJM Transmission Owners*. Once PJM Transmission Owners develop a new cost allocation method, the Commission reviews it to determine whether it is just and reasonable, and any party may intervene in that proceeding and present arguments on that point.") (footnotes omitted) (emphasis added).

¹⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

¹⁵ See *Pennsylvania-New Jersey-Maryland Interconnection*, 105 FERC ¶ 61,294 (2003), *order on reh'g*, 108 FERC ¶ 61,032 (2004) (PJM) (approving settlement agreement providing that the PJM Transmission Owners pursuant to the joint action provisions of the CTOA, section 8.5.1, and subject to an obligation to consult with PJM and the PJM Members Committee pursuant to CTOA, section 7.3.2, shall have the exclusive and unilateral right to make such section 205 filings). See also, *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002), *order on remand*, *Pennsylvania–New Jersey–Maryland Interconnection*, 101 FERC ¶ 61,318 (2002), *subsequent appeal*, 329 F.3d 856 (D.C. Cir. 2003).

¹⁶ See PJM Answer, at 2 n.5.

¹⁷ PJM Tariff, section 9.1.

¹⁸ CTOA, sections 7.3.2 and 7.5.1.

and meritless.¹⁹ As just discussed, the PJM Transmission Owners have exclusive FPA section 205 rights to amend the Tariff with respect to cost allocation issues. As such, the PJM Transmission Owners were the parties responsible for submitting revisions to Tariff, Schedule 12²⁰ in order to comply with the cost allocation requirements of Order No. 1000. The PJM Transmission Owners and PJM entered into the CCIA so that PJM could work with the Transmission Owners to develop a compliant cost allocation methodology. By virtue of the Commission- and Court-approved nature of the relationship between PJM and the Transmission Owners, PJM must routinely work with the Transmission Owners. LS Power provides no evidence to suggest, however, that doing so compromises PJM’s independence as a Regional Transmission Organization. LS Power’s arguments to the contrary should be dismissed.

Third, LS Power argues that by declining to perform certain analyses it requested PJM to perform,²¹ PJM is “working in concert with the [PJM Transmission Owners] to support cost allocation methodologies that diminish the number of projects subject to competition.”²² LS

¹⁹ See LS Power Comments at 14 (“The existence of a [CCIA] and expansion of the *de minimis* rule demonstrates the problem with allowing incumbent PJM transmission owners to set cost allocation rules for future projects.”).

²⁰ See PJM Open Access Transmission Tariff Revisions to Modify Cost Allocation for PJM Required Transmission Enhancements, Docket No. ER13-90-000 (October 11, 2012) (“Schedule 12 Filing”). See also *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013), *order on reh’g and compliance*, 147 FERC ¶ 61,128 (2014), *order on reh’g and compliance*, 150 FERC ¶ 61,038 (2015).

²¹ LS Power refers to its November 12, 2020 letter (“November 2020 Letter”) sent to the PJM Board of Managers (“PJM Board”) concerning End of Life (“EOL”) transmission planning issues and Attachment M-3 of the PJM Tariff. In its Comments, LS Power attempts to draw a parallel to Complainants’ description in the Complaint that Neptune asked PJM to perform sensitivity analyses on certain RTEP upgrade projects but PJM declined to run the requested analysis. Neptune went on to clarify that instead PJM “provided a workbook containing data on its calculation of cost allocation assignments for the identified RTEP upgrades – with a further explanation that [such] data would allow Neptune to independently run the sensitivity analyses.” Complaint at 13-14. Nothing in the Complaint could be read to attribute that Complainants perceived PJM’s response to be an effort to stonewall Complainants’ efforts to perform an in-depth review of the solution-based DFAX methodology and resulting allocations.

²² See LS Power Comments at 14. In an effort to buttress such unfounded allegations, LS Power concludes without any factual bases that “with the suggestion and guidance from PJM,” the PJM Transmission Owners filed Tariff revisions to raise the *de minimis* threshold from .001 to .01 percent. See LS Power Comments at 12.

Power's attempt to ascribe such nefarious intent to PJM is without any factual basis, and is not helpful to resolving the very specific issues raised in this proceeding.

Simply put, the Commission should be loath to accept sweeping vitriolic rhetoric in lieu of concrete proposals to address the merits of the Complaint. The Commission should therefore set aside LS Power's arguments calling PJM's independence into question, and reject its request to open an investigation into related issues.²³

III. CONCLUSION

PJM respectfully requests that the Commission grant this Motion for Leave to Answer, consider this Answer, and deny the Complaint for the reasons set forth in PJM's Answer.

Respectfully submitted,

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²³ See LS Power Comments at 15 (“LS Power urges the Commission to open a proceeding to explore the issue that created the situation to begin with and explore whether incumbent PJM transmission owners are the appropriate entities to establish the cost allocation for future regionally planned projects to which they have no ownership claim.”).

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, PA, this 25th day of February, 2021.

/s/ Jessica M. Lynch

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