

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

PJM Interconnection, L.L.C.

)

Docket No. ER18-1730-000

**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 of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), PJM Interconnection, L.L.C. (“PJM”) hereby submits this motion for leave to answer and answer to the protests and comments filed in the above-captioned docket by the Illinois Municipal Electric Agency (“IMEA”), American Municipal Power, Inc. (“AMP”), and the Financial Marketers Coalition (“FMC”). As explained herein, the protests and comments do not present any credible grounds to justify denial of the proposed revisions to the *PJM Open Access Transmission Tariff* (“PJM Tariff”) and the *Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.* (“Operating Agreement”) requested in PJM’s June 1, 2018 filing.¹ To the contrary, the objections advanced are beyond the scope of this proceeding, unsupported, and speculative. Accordingly, the Commission should accept this answer, reject the protests, and accept PJM’s proposed revisions to the PJM Tariff and Operating Agreement, which revisions were endorsed and

¹ PJM seeks leave to submit this answer and requests that the Commission grant any necessary waivers. This answer clarifies facts relevant to the Commission’s decision-making process and is offered to aid that process. In similar situations, the Commission has accepted answers. *See, e.g., PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,165, at P 24 (2012) (accepting answers to a protest because “they have provided information that assisted [the Commission] in [its] decision-making process”); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,031, at P 10 (2003) (accepting answer because “it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will [e]nsure a complete record upon which the Commission may act”); *Morgan Stanley Capital Grp., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017, at 61,036 (2000) (accepting answer as “helpful in the development of the record”).

approved by PJM’s members with no objections.² PJM also notes that, of the three protestors and commenters, only AMP requests that PJM’s proposed revisions to the PJM Tariff and Operating Agreement be rejected.

I. ANSWER

A. Pursuant to Section 205 of the Federal Power Act, the Just and Reasonable Standard of Review Applies to the Proposed PJM Tariff and Operating Agreement Revisions Filed in this Proceeding

AMP states that PJM’s Phase II filing fails to address the subject matter of the pseudo-tie complaints³ in any meaningful way and, therefore, the Commission should reject PJM’s filing and order PJM to submit a filing that resolves the problem of overlapping and unauthorized congestion charges and provides a remedy for past overcharges.⁴ IMEA requests that the Commission approve PJM’s filing on a temporary basis and direct the PJM to work with Midcontinent Independent System Operator, Inc. (“MISO”) on an alternative proposal.⁵ Implicit in AMP’s and IMEA’s requests is that the Commission find PJM’s currently-effective tariffs unjust and unreasonable. IMEA argues that PJM proposed revisions in Phase I and Phase II—while an improvement that should be granted on a temporary basis—is not the best solution to address the

² See *PJM Interconnection, L.L.C.*, Proposed Revisions to PJM Tariff and Operating Agreement to Address Congestion Charge Overlap, Docket No. ER18-1730-000 (June 1, 2018) (“June 1 Filing”).

³ The complaints are as follows: Complaint of Tilton Energy LLC, Docket No. EL16-108-000 (August 25, 2016) (“Tilton Complaint”); Complaint and Motion for Consolidation by American Power, Inc., Docket No. EL17-29-000 (December 19, 2016) (“AMP-MISO Complaint”); Complaint and Motion for Consolidation by Northern Illinois Municipal Power Agency, Docket No. EL17-31-000 (December 21, 2016); Complaint and Motion for Consolidation by American Municipal Power, Inc., Docket No. EL17-37-000 (Jan. 6, 2017) (“AMP-PJM Complaint”); Complaint and Motion to Consolidate, Docket No. EL17-54-000 (March 28, 2017) (“Dynergy Complaint”) (collectively, the “Pseudo-tie Complaints”).

⁴ *PJM Interconnection, L.L.C.*, Protest of American Municipal Power, Inc., Docket No. ER18-1730-000, at 8 (Jun. 22, 2018) (“AMP Protest”).

⁵ *PJM Interconnection, L.L.C.*, Protest and Motion to Consolidate of the Illinois Municipal Electric Agency, Docket No. ER18-1730-000, at 8 (Jun. 22, 2018) (“IMEA Protest”).

complaints filed in the 206 proceedings.⁶ The best solution, according to IMEA, is for PJM and MISO to develop a single dispatch solution for pseudo-tied generators between the two RTOs that includes MISO's congestion costs in PJM's locational marginal prices and eliminates the MISO congestion costs and losses billed separately by MISO (i.e., a single dispatch and bill from PJM).⁷

AMP's and IMEA's assertions and requests for alternative proposals are tantamount to a complaint and beyond the scope of this proceeding. PJM acknowledges the pending Pseudo-Tie Complaints. However, in this proceeding, PJM exercises its authority under section 205 of the Federal Power Act to propose revisions to its existing tariffs.⁸ Contrary to AMP's and IMEA's assertions otherwise, the June 1 Filing does not imply—nor does PJM concede—that its existing tariffs or the *Joint Operating Agreement Between the Midcontinent Independent System Operator, Inc. and PJM Interconnection, L.L.C.* (“JOA”) are unjust and unreasonable. Different legal standards of review apply to sections 205 and 206⁹ of the Federal Power Act. The fact that a public utility makes a filing under section 205 to amend its existing tariff does not imply that the tariff is or has become unjust and unreasonable. The legal standard of review for revisions proposed pursuant to section 205 of the Federal Power Act, such as the PJM Tariff and Operating Agreement revisions proposed in this proceeding, requires FERC to determine whether the *proposed rate* is just and reasonable.¹⁰ In contrast, under section 206 of the Federal

⁶ IMEA Protest at 8.

⁷ *Id.*

⁸ 16 U.S.C. § 824d.

⁹ 16 U.S.C. § 824e.

¹⁰ 16 U.S.C. § 824d(e).

Power Act, the complainants must demonstrate that the PJM's existing tariffs are unjust and unreasonable before any revisions can be adopted.¹¹

AMP's request that the Commission reject PJM's filing and order PJM to submit a filing that resolves the problem of "unauthorized congestion charges" and provides a remedy for past overcharges is essentially a complaint and request to apply the Federal Power Act section 206 "unjust and unreasonable" legal standard of review to this Federal Power Act section 205 proceeding. Similarly, IMEA's requests that the Commission approve PJM's filing on a temporary basis and direct PJM to work with MISO on an alternative proposal is beyond the scope of this proceeding. Under section 205 of the Federal Power Act, the focus of the Commission's review must be on the justness and reasonableness of the June 1 Filing, rather than on any alternative proposals propounded by the commenters.¹² The courts have held that "[w]hen acting on a public utility's rate filing under section 205 [of the Federal Power Act], the Commission undertakes 'an essentially passive and reactive role' and restricts itself to evaluating the confined proposal."¹³ AMP's and IMEA's request that PJM submit alternative proposals is inconsistent with PJM's proposal and, as explained above, should be rejected as contrary to section 205 of the Federal Power Act and beyond the scope of the June 1 Filing.

For the record, while PJM acknowledges the pending Pseudo-Tie Complaints, PJM does not believe the complainants satisfied their burden in the Pseudo-tie

¹¹ 16 U.S.C. § 824e(b).

¹² See, e.g., *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (noting that FERC's authority to review rates is limited to a question of whether the proposed rate is reasonable, it does not "extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs").

¹³ *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 662 (D.C. Cir. 2017).

Complaints proceedings to demonstrate that MISO's or PJM's (collectively, "regional transmission organizations" or "RTOs") tariffs or the JOA are unjust and unreasonable or that the RTOs violated any tariff provision. The Commission will address these claims in the Pseudo-tie Complaints dockets in due course, but those proceedings pose no obstacle to adopting the prospective PJM Tariff and Operating Agreement revisions proposed in this proceeding. PJM, therefore, urges the Commission to accept the proposed changes as filed and to allow the solution to become effective as proposed.

B. AMP Mischaracterizes New Hedging Mechanisms as a "Schedule Cutting" Option

In the June 1 Filing, PJM proposed to provide market participants with a new transaction type to hedge exposure to real-time market financial risk for pseudo-ties from PJM into MISO ("Day-Ahead Pseudo-Tie Transactions").¹⁴ The new product allows, but does not require, the market participant to specify the maximum amount a market participant will pay for congestion in the day-ahead market between the source (i.e., the pseudo-tie generator) and sink of the transaction (i.e., the PJM-MISO interface).¹⁵ If the congestion charges are less than the amount specified in the bid, then the transaction will be scheduled in the day-ahead energy market.¹⁶ If the congestion charges are more than the amount specified, it will not be scheduled.¹⁷ AMP wrongly refers to this new mechanism as "schedule cutting."¹⁸ "Schedule cutting" implies that schedules are cut in

¹⁴ June 1 Filing at 2–3.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ AMP Protest at 2–4.

real-time and that PJM determines whether the schedule is cut. In contrast, this product allows the market participant, not PJM, to determine whether the transaction is scheduled in the day-ahead market based on congestion costs (i.e., to manage risk) and the use of the new product is voluntary. Regardless of whether or not the transaction is scheduled in the day-ahead market, the market participant's pseudo-tie unit schedule will exist in the real-time market. Only the value of the schedule can change, if the market participant chooses, to be based on the day-ahead or the real-time prices.

C. PJM's and MISO's Solutions for Phase II Can Be Implemented Independently

AMP argues that the Day-Ahead Pseudo-Tie Transaction may only be used by pseudo-ties exporting from PJM to MISO, not AMP and all of the complainants that have interests in MISO generators that are importing into PJM from MISO. As a result, AMP argues that PJM's proposal appears to be an uncoordinated.¹⁹

As PJM and MISO stated in their respective Phase I Filings, each RTO would submit revisions to their respective tariffs to effectuate Phase II.²⁰ PJM filed tariff revisions to, among other things, create a hedging mechanism for PJM congestion. MISO will be filing revisions to its tariff in the future to provide a similar product. PJM's proposed revisions to the PJM tariff will provide benefits to its market participants and can be implemented independent of MISO's proposed tariff revisions for Phase II (i.e., the PJM and MISO tariff revisions do not need to be filed or implemented at the same time). PJM's proposed tariff revisions are just and reasonable regardless of MISO's

¹⁹ AMP Protest at 2–3.

²⁰ *PJM Interconnection, L.L.C.*, Proposed Revisions to Joint Operating Agreement between PJM and MISO to Address Congestion Charge Overlap Issues and Request for Waivers, Docket No. ER18-137-000 (Oct. 23, 2017) (“Phase 1 Filings”).

tariff revision. PJM filed the revisions as quickly as possible to allow the PJM market participants to realize the benefits as quickly as possible. Significant coordination occurred for both the Phase I and Phase II solutions between PJM, MISO, and their respective stakeholders.

D. PJM's Currently-Effective and Proposed Rules Result in the Just, Reasonable, and Non-Discriminatory Treatment of Export Transactions, Import Transactions, and Internal Transactions

AMP states that PJM's filing demonstrates that PJM's *currently-effective rules* for charging congestion for exports contrasts with the approach PJM applies to imports into PJM using pseudo-ties are unjust and unreasonable.²¹ AMP's assertion is beyond the scope of this proceeding. Procedurally, as stated above, the legal standard of review for revisions proposed pursuant to section 205 of the Federal Power Act, such as the PJM Tariff and Operating Agreement revisions proposed in this proceeding, requires FERC to determine whether the *proposed rate* is just and reasonable. PJM did not propose revisions to the PJM Tariff or Operating Agreement to change the source or sink for which imports or exports are assessed congestion. AMP's claim that PJM's current practice of pricing and assessing congestion charges are unjust and unreasonable under PJM's FERC-filed and -accepted tariffs is tantamount to a complaint and a request to apply the Federal Power Act section 206 "unjust and unreasonable" legal standard of review to this Federal Power Act section 205 proceeding. In this section 205 proceeding, the Commission may reject the proposed revisions to ensure the revisions are just and reasonable. But it may not require the termination of or revisions to PJM Tariff or Operating Agreement sections that are not related to the revisions proposed in the 205 proceeding without finding those sections are

²¹ AMP Protest at 4.

unjust and unreasonable under Section 206 of the Federal Power Act. AMP is attempting to shift its section 206 burden of proof to the Commission. As such, AMP's claim is beyond the scope of this proceeding and should be rejected.

Even assuming, *arguendo*, that statutory requirements, procedural rules, Commission precedent, and due process allowed Commission action in this proceeding under section 206 of the Federal Power Act, which they do not, AMP's claims are inapposite: PJM currently assesses congestion charges to all export transactions, import transactions, and transactions internal to PJM—internal generators include generators pseudo-tied into PJM—in a just, reasonable, and non-discriminatory manner. For all export transactions, PJM assesses congestion charges between the generator and the interface. For all import transactions into PJM from non-pseudo-tied units, PJM assesses congestion from the interface to the load within PJM. For all internal generators, which include generators pseudo-tied into PJM, PJM assesses congestion charges from the generator to the load within PJM. A generator pseudo-tied into PJM is treated similarly to generators within the geographical footprint of PJM. For generators within PJM, PJM models, dispatches, and charges congestion for the impact of the entire transaction from the generator to the load. In other words, for both generators within the geographical footprint of PJM and generators pseudo-tied into PJM, the source of the transaction is the generator within PJM (for pseudo-ties, the generator is electrically pseudo-tied into PJM, but nevertheless within PJM) and the sink of the transaction is the load within PJM. Therefore, contrary to AMP's assertions otherwise, PJM charges for congestion in a comparable, non-discriminatory, just and reasonable manner.

E. Sections 2.1, 2.6A, and 5.1.4 of Schedule 1 of the Operating Agreement do not Preclude PJM's Current Practices or Proposed Revisions

Similar to arguments raised by AMP in response to the Phase I Filings, AMP argues that PJM lacks authority under the PJM Open Access Transmission Tariff (“PJM Tariff”) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”) to price and assess congestion charges for pseudo-ties from MISO into PJM for congestion arising on the MISO transmission system under *currently-effective* sections 2.1, 2.6A, and 5.1 of Attachment K-Appendix of the PJM Tariff and the parallel provisions in the Operating Agreement.²²

Once again, AMP’s assertions are procedurally beyond the scope of this proceeding. Under the currently-effective PJM Tariff and Operating Agreement, including sections 2.1, 2.6A, or 5.1 of Attachment K-Appendix of the PJM Tariff or the parallel provisions in the Operating Agreement, PJM may assess congestion charges from the market participant’s pseudo-tie generator within MISO to the load within PJM. PJM did not propose revisions in this proceeding to change these sections or its interpretation of these sections. AMP’s claim that PJM’s current practice of pricing and assessing congestion charges are not authorized under PJM’s FERC-filed and -accepted tariffs is, once again, the equivalent of a complaint and a request to apply the Federal Power Act section 206 “unjust and unreasonable” legal standard of review to this Federal Power Act section 205 proceeding. Moreover, the June 1 Filing to revise the PJM Tariff and Operating Agreement pursuant to section 205 of the Federal Power Act does not render either PJM’s currently-effective tariff or practices unjust and unreasonable. As such, AMP’s claim is beyond the scope of this proceeding and should be rejected.

²² AMP Protest at 4–5.

In addition to being procedurally deficient, AMP's argument provides no substantive grounds on which to justify denial of PJM's proposed revisions to the PJM Tariff and Operating Agreement. AMP asserts that PJM should assign the congestion price at the interface pricing point applicable to imports. However, as described above, generators pseudo-tied into PJM are considered electrically located within PJM and, as such, electrically modeled, operated, and compensated in a manner similar to other generators within PJM to the extent possible. Therefore, as it does with other internal generators, PJM calculates congestion for generator pseudo-ties into PJM from the generator, which is electrically located within PJM, to the load in PJM.

F. IMEA's and AMP's Requests for Single Dispatch and Alternative Should be Rejected as Beyond the Scope of the Proceeding

Consistent with the Pseudo-Tie Complaints and protests to the Phase I Filings, AMP and IMEA argue that PJM should be directed to effectuate a single dispatch signal for pseudo-tied resources.²³ Under section 205 of the Federal Power Act, the focus of the Commission's review must be on the justness and reasonableness of the June 1 Filing, rather than on any alternative proposals propounded by the commenters. The courts have held that "[w]hen acting on a public utility's rate filing under section 205 [of the Federal Power Act], the Commission undertakes 'an essentially passive and reactive role' and restricts itself to evaluating the confined proposal."²⁴ AMP's and IMEA's requests that the Commission require PJM and MISO to implement a single dispatch solution is inconsistent with the PJM's proposal and, as explained above, should be rejected as

²³ AMP Protest at 6; IMEA Protest at 8, 10.

²⁴ *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 662 (D.C. Cir. 2017).

contrary to section 205 of the Federal Power Act and beyond the scope of the June 1 Filings. In the past, the Commission rejected the concept of a single dispatch for the combined MISO-PJM footprint, and there is no basis for establishing such a mechanism for pseudo-tied resources.²⁵

G. Phase I Solution Must be Implemented Prior to or Concurrently with Phase II Solution

IMEA argues that Phase II should not be implemented before Phase I. PJM agrees that Phase I should be implemented before or concurrently with Phase II. PJM requested an effective date of August 1, 2018, for both the JOA revisions proposed in the Phase I Filings and PJM Tariff and Operating Agreement proposed in Phase II (i.e., the PJM Tariff and Operating Agreement revisions proposed in this proceeding). However, as stated above, it is not necessary to implement PJM's and MISO's Phase II revisions concurrently.

H. Administrative Charges

AMP argues that PJM's proposed revisions to Schedule 9-3 of the PJM Tariff to include Day-Ahead Pseudo-Tie Transactions in the list of transaction types from which PJM recovers costs for administering the energy markets should not apply to pseudo-tied imports, such as AMP's share of its Prairie State resource in MISO. PJM's proposed revisions to Schedule 9-3 of the PJM Tariff do not apply to pseudo-tied import transactions into PJM. Only entities that utilize the voluntary, new product for exports from PJM into MISO (i.e., Day-Ahead Pseudo-Tie Transactions) must pay the

²⁵ See, e.g., *Wisconsin Pub. Serv. Corp.*, 118 FERC ¶ 61,089, *reh'g denied*, 120 FERC ¶ 61,269 (2007) (denying a request to institute a single dispatch in the combined MISO-PJM footprint).

administrative charges. The purpose of the administrative charge is to pay for the costs to administer such transactions (i.e., Day-Ahead Pseudo-Tie Transactions).

I. Availability of Day-Ahead Pseudo-Tie Transactions

FMC questions whether the Day-Ahead Pseudo-Tie Transactions product should be available to all generators.²⁶ The product is only available to pseudo-tie transactions because they have the unique situation of following the dispatch signal of the attaining balancing authority while also being subject to congestion on the native balancing authority's system. Moreover, the product is tied to transmission service, which demonstrates a physical delivery of energy from a unit specific generator to physical load located in an external area.

II. CONCLUSION

WHEREFORE, for the reasons set forth herein, PJM's proposed revisions to the PJM Tariff and Operating Agreement should be accepted effective August 1, 2018 as requested in the June 1 Filing.

Respectfully submitted,

/s/ James M. Burlew

James M. Burlew
Senior Counsel
PJM Interconnection, L.L.C.
2750 Monroe Boulevard
Audubon, PA 19403
(610) 666-4345
james.burlew@pjm.com

Craig Glazer
Vice President, Federal Government Policy
PJM Interconnection, L.L.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 423-4743
craig.glazer@pjm.com

July 12, 2018

²⁶ *PJM Interconnection, L.L.C.*, Comments of the Financial Marketers Coalition, Docket No. ER18-1730-000, at 3 (Jun. 22, 2018).

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 12th day of July, 2018.

/s/ James M. Burlew _____
James M. Burlew
Senior Counsel
PJM Interconnection, L.L.C.
2750 Monroe Boulevard
Audubon, PA 19403
(610) 666-4345