

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

Hickory Wind, LLC

)

Docket No. ER25-1594-001

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

PJM Interconnection, L.L.C. (“PJM”), pursuant to Rules 212 and 213 of the Rules of Practice and Procedure¹ of the Federal Energy Regulatory Commission (“Commission”), moves for leave to answer and answers the motion to lodge and request for rehearing of the Commission’s order² denying the request of Hickory Wind, LLC (“Hickory Wind”) for waiver of Part IV, Subpart A, section 36.2A.4 of the PJM Open Access Transmission Tariff (“Tariff”)³ to allow PJM to perform a Material Modification analysis of Hickory Wind’s proposal to move the Point of Interconnection (“POI”) for its proposed 78.65-megawatt wind generating facility.⁴ In support of its request for rehearing, Hickory Wind requests that the Commission accept the newly offered Affidavit of Reynaldo Rodriguez (“Rodriguez Affidavit”), an employee of Hickory Wind’s parent company, which Hickory Wind alleges supports the conclusion that moving the POI would not constitute a Material Modification.⁵

As explained below, the Rehearing Request and the motion to lodge should be denied. Hickory Wind’s attempt to introduce the Rodriguez Affidavit at the rehearing stage

¹ 18 C.F.R. §§ 385.212, 385.213.

² *Hickory Wind, LLC*, 191 FERC ¶ 61,185 (2025) (“June 3 Order”).

³ The Tariff is currently located under PJM’s “Intra-PJM Tariffs” eTariff title. *See* PJM Open Access Transmission Tariff, Part IV, Subpart A, section 36.2A.4 (“Tariff”). Terms not otherwise defined herein shall have the same meaning as set forth in the Reliability Assurance Agreement, the Tariff, and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.

⁴ *Hickory Wind, LLC*, Motion to Lodge and Request for Rehearing of Hickory Wind, LLC, Docket No. ER25-1594-001 (July 3, 2025) (“Rehearing Request”).

⁵ Rehearing Request at 7.

of this proceeding is a thinly veiled effort to attempt to cure the deficiencies of its waiver request, and should be rejected outright as procedurally improper.⁶ As the Commission found in the June 3 Order, Hickory Wind did not meet its burden to demonstrate that waiver of Tariff, Part IV, Subpart A, section 36.2A.4 will solve a concrete problem.⁷ Hickory Wind had ample opportunity to introduce the evidence purportedly contained in the Rodriguez Affidavit during the pendency of this proceeding but chose not to do so. The Rehearing Request fails to demonstrate a compelling showing of good cause to allow the lodging of the Rodriguez Affidavit. Accordingly, Hickory Wind should not be permitted to circumvent the Commission's prohibition against the introduction of new evidence on rehearing.

Even if the Commission were to consider the Rodriguez Affidavit, the Rehearing Request should be denied. Contrary to the Rehearing Request, the June 3 Order's conclusions were grounded in record evidence that Hickory Wind itself offered, and the Rehearing Request presents no new arguments warranting a different outcome. PJM therefore requests that the Commission deny rehearing of the June 3 Order.

I. MOTION FOR LEAVE TO ANSWER

The Commission does not generally permit answers to requests for rehearing under Rule 713(d).⁸ However, the Commission has permitted answers to requests for rehearing when they clarify the disputed issues and provide the Commission with information to

⁶ 18 C.F.R. § 385.713(c)(3).

⁷ June 3 Order at P 26.

⁸ 18 C.F.R. § 385.713(d).

assist its decision-making.⁹ This answer satisfies those standards, and PJM therefore asks that the Commission accept it.

II. ANSWER TO MOTION TO LODGE

The motion to lodge should be denied, and the Rodriguez Affidavit rejected without consideration of its content. The Commission’s rules are clear: parties are prohibited from introducing new evidence for the first time on rehearing absent a compelling showing of good cause, as “such practice would allow an impermissible moving target, and would frustrate needed administrative finality.”¹⁰ Hickory Wind argues that good cause exists to permit the introduction of the Rodriguez Affidavit because it “may affect the outcome of the conclusions reached in the June 3 Order.”¹¹ But Hickory Wind offers no evidence demonstrating that the evidence allegedly contained in the Rodriguez Affidavit was not available prior to issuance of the June 3 Order, nor does it explain why introducing the Rodriguez Affidavit on rehearing should overcome the Commission’s objectives of ensuring fairness and due process and preventing unnecessary administrative delay.

While the Commission has allowed the introduction of new evidence on rehearing in narrow circumstances where such evidence was not previously available,¹² those

⁹ See, e.g., *Appalachian Power Co.*, 161 FERC ¶ 61,070, at P 15 (2017) (accepting an answer to a request for rehearing because it provided the Commission with information that assisted in its “consideration of this matter”); *Mich. Elec. Transmission Co.*, 106 FERC ¶ 61,064, at P 3 (2004) (accepting an answer to a rehearing request as “it provides information that clarifies the issues and aids us in the decisional process”).

¹⁰ *Commonwealth Edison Co.*, 127 FERC ¶ 61,301, at P 14 (2009) (citing *PPL Elec. Utils. Corp.*, 124 FERC ¶ 61,229, at P 7 (2008); *TransCanada Power Marketing Ltd. v. ISO New England Inc.*, 123 FERC ¶ 61,149, at P 22 (2008); *N.Y. Indep. Sys. Operator, Inc.*, 112 FERC ¶ 61,283, at P 35 n.20 (2005)); see also *Sea Robin Pipeline Co., LLC*, 180 FERC ¶ 61,199, at P 15 (2022) (explaining the Commission does not generally consider new evidence on rehearing absent a compelling showing of good cause); *Nev. Power Co.*, 111 FERC ¶ 61,111, at P 10 (2005) (“[T]he request for rehearing is not the time or place to introduce additional evidence, absent a compelling showing of good cause.”)).

¹¹ Rehearing Request at 5.

¹² See *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,043, at P 18 (2024).

circumstances are not present here. In its Waiver Request, Hickory Wind asserted that “Hickory Wind’s performed studies indicate no adverse impacts on the bulk transmission system will result from move of the POI down the same line approximately 2 miles.”¹³ In its April 24, 2025 answer, Hickory Wind reiterated that it “performed PSSE studies that support its position that the move will not adversely impact the transmission system or other customers.”¹⁴ Yet in both instances, it offered no evidentiary support for this claim. In support of its motion to lodge, Hickory Wind states that Mr. Rodriguez, who presumably performed the analyses referenced in the Waiver Request and answer, is an employee of its parent company, UKA North America LLC (“UKA”), and has been employed by UKA since 2019.¹⁵ Accordingly, Hickory Wind had multiple opportunities to offer the Rodriguez Affidavit into the evidentiary record in this proceeding, but provides no explanation as to why it failed to do so.¹⁶

Moreover, consideration of the Rodriguez Affidavit on rehearing would be unduly prejudicial and disrupt efficient processing of PJM’s interconnection queue by further delaying the final outcome of Hickory Wind’s Waiver Request.¹⁷ Introduction of the Rodriguez Affidavit at this stage of the proceeding denies PJM the opportunity to meaningfully respond to Mr. Rodriguez’s assertions and purported analyses. The Rodriguez Affidavit includes detailed discussion of the methodology and results of the

¹³ *Hickory Wind LLC*, Request of Hickory Wind LLC for Prospective Tariff Waiver, Expedited Action, and Shortened Comment Period, Docket No. ER25-1594-000, at 8 (Mar. 13, 2025) (“Waiver Request”).

¹⁴ *Hickory Wind, LLC*, Motion for Leave to Answer and Answer of Hickory Wind LLC to Protest of PJM Interconnection, L.L.C, Docket No. ER25-1594-000, at 3 (Apr. 24, 2025) (“Protest”).

¹⁵ Rehearing Request at Attachment B.

¹⁶ *Westar Energy, Inc.*, 134 FERC ¶ 61,176, at P 23 (2011) (denying rehearing request where a party submitted new evidence to support a previously unsupported argument).

¹⁷ See *PPL Elec. Utils. Corp.*, 124 FERC ¶ 61,229, at P 7 (noting that introduction of new evidence on rehearing would “frustrate needed administrative finality”).

studies Mr. Rodriguez apparently conducted prior to filing of the Waiver Request. Given the Commission’s restriction on responses to requests for rehearing under Rule 713(d), PJM’s subject matter experts have no procedural opportunity to substantively rebut Mr. Rodriguez’s data and analyses.¹⁸ In addition, consideration of the Rodriguez Affidavit on rehearing would “frustrate administrative finality” by further delaying a final determination as to whether Hickory Wind’s interconnection request can remain in the queue. Placing Hickory Wind’s interconnection request in a holding pattern will exacerbate delays in processing other interconnection requests and divert PJM’s resources to further support a conclusion it has already demonstrated: Hickory Wind’s changed POI constitutes a Material Modification, and thus requires withdrawal.¹⁹

As demonstrated above, no compelling good cause exists to lodge the Rodriguez Affidavit on rehearing. The motion to lodge should therefore be denied.

III. ANSWER TO REHEARING REQUEST

Even if the Commission were to entertain the Rodriguez Affidavit, the Rehearing Request does not overcome the Commission’s finding that the Waiver Request should be rejected.²⁰ Hickory Wind argues that the June 3 Order is not a product of reasoned decision-making or supported by substantial evidence because it is “based on a flawed assumption about the outcome of an engineering analysis that PJM has not yet

¹⁸ 18 C.F.R. § 385.713(d). Because parties are precluded from filing answers to requests for rehearing, the Commission has long held that introducing arguments at the rehearing stage raises concerns of fairness and due process. *La. Pub. Serv. Comm’n v. Entergy Corp.*, 172 FERC ¶ 61,056, at P 38 (2020); *Omaha Pub. Power Dist.*, 164 FERC ¶ 61,238, at P 11 (2018) (citing *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 16 (2016)).

¹⁹ See June 3 Order at P 17.

²⁰ See *Commonwealth Edison Co.*, 127 FERC ¶ 61,301, at P 16.

conducted.”²¹ To the contrary, the June 3 Order found, based on the record before it, that the Waiver Request would not solve a concrete problem because it “would be unlikely to alter the conclusion that the change to the [POI] is a material modification.”²² Rather than a “flawed assumption,” this determination was grounded in record evidence of communications between Hickory Wind and PJM that *Hickory Wind offered* and PJM relied upon in its Protest.²³

The record demonstrates that PJM determined, based in part on discussions with the Interconnected Transmission Owner, Commonwealth Edison Company (“ComEd”), that the request to move the POI would require ComEd to “essentially redo the entire engineering of the project” and “would constitute as a different project.”²⁴ That outcome, grounded in the engineering judgment of both PJM and ComEd, whose Transmission Owner Interconnection Facilities will be affected by the POI change, is the very essence of a Material Modification.²⁵ Hickory Wind claims that the Commission discounted Hickory Wind’s studies, indicating that moving the POI would not constitute a Material

²¹ Rehearing Request at 5.

²² June 3 Order at P 26. Tariff, Part IV, Subpart A, section 36.2A.4 makes plain that “[f]or purposes of this section 36.2A.4, any change to the [POI] . . . shall constitute a Material Modification.”

²³ See Waiver Request at 8; *id.*, Exhibit D at 1 (Jan. 21, 2025 email from D. O’Connor, PJM, to G. Butera, UKA); *Hickory Wind, LLC*, Protest of PJM Interconnection, L.L.C, Docket No. ER25-1594-000, at 8 (Apr. 3, 2025).

²⁴ Protest at 2 (citing Waiver Request, Exhibit B at 1 (Sept. 12, 2024 email from G. Yan, PJM, to D. DuBois, UKA)).

²⁵ Tariff, Part IV, Subpart A, section 36.2A.4. The Tariff defines a “Material Modification” as “any modification to an Interconnection Request that has a material adverse effect on the cost or timing of Interconnection Studies related to, or any Network Upgrades or Local Upgrades needed to accommodate, any Interconnection Request with a later Queue Position.” Tariff, Part I, section, 1, Definitions – L-M-N. As PJM explained in its Protest, “[t]he Tariff does not permit changes to the POI after an ISA has been executed because, in part, the Interconnected Transmission Owner (in this case, ComEd) has already performed the Facilities Study for the physical interconnection work to accommodate the Interconnection Request.” Protest at 8.

Modification,²⁶ but as discussed above, Hickory Wind offered no evidence to support such study results, an error that it now attempts to rectify at this late stage of the proceeding through the introduction of the Rodriguez Affidavit. Indeed, the June 3 Order acknowledges Hickory Wind's references to its studies, but concludes that "it is not clear that granting Hickory Wind's waiver request will resolve the problem it identifies."²⁷ Granting waiver of the Tariff based on mere assertions that Hickory Wind's studies reached the opposite conclusion than that reached by PJM and ComEd would amount to mere speculation based on claims that could have been, but were not, presented to the Commission in a timely manner so as to allow for a complete record for the Commission's consideration.

Having failed to establish that the June 3 Order lacked reasoned decision-making, Hickory Wind now argues for the first time that the "actual concrete problem" before the Commission is the barrier to conducting the Material Modification analysis itself.²⁸ This Commission should summarily dispense with this attempted reframing of the issue. The Waiver Request's characterization of the problem at hand was unequivocal: "[g]ranting Hickory Wind's waiver request will allow Hickory Wind to *address the concrete problem of interconnecting its Project to a POI*."²⁹ Hickory Wind therefore clearly understood that the problem to be resolved through its request was not simply waiving the Tariff's explicit

²⁶ Rehearing Request at 8.

²⁷ June 3 Order at P 26.

²⁸ See Rehearing Request at 6.

²⁹ Waiver Request at 7 (emphasis added).

requirement that changes to the POI constitute Material Modifications,³⁰ but instead was to reach the ultimate conclusion that moving its POI was not a Material Modification, allowing its interconnection request to move forward. The June 3 Order recognizes that, *even if* the automatic determination under Tariff, Part IV, section 36.2A.4 that a POI change is a Material Modification were waived, and PJM conducted a Material Modification analysis, “it is not clear that granting Hickory Wind’s waiver request will resolve the problem *it identifies*.”³¹ The Commission should reject Hickory Wind’s attempt to recast the scope of the problem to be addressed. Moreover, the Commission should be cautious about allowing the waiver process to be utilized to make ultimate decisions on the correctness of submitted studies concerning Material Modification. The waiver process was never intended as a substitute for the use of other established legal vehicles to challenge decisions made by public utilities consistent with their tariffs.

³⁰ The Tariff provides limited exceptions to this requirement, all of which apply to earlier phases of the interconnection process and are inapplicable to Hickory Wind. *See* Tariff, Part IV, Subpart A, sections 36.1.5, 36.2.1, and 36.2A.1.

³¹ June 3 Order at P 26 (emphasis added).

IV. CONCLUSION

PJM asks that the Commission consider this answer, deny the motion to lodge and the request for rehearing, and affirm the June 3 Order.

Respectfully submitted,

/s/ Elizabeth P. Trinkle

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***On Behalf of
PJM Interconnection, L.L.C.***

July 17, 2025

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 Washington, D.C., this 17th day of July 2025.

/s/ Elizabeth P. Trinkle
Elizabeth P. Trinkle
Attorney for
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