

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

Public Citizen, Inc.)	
)	
v.)	Docket No. EL18-61-000
)	
PJM Interconnection, L.L.C.)	

ANSWER OF PJM INTERCONNECTION, L.L.C.

Pursuant to Rule 206(f) and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”)¹ and the Commission’s Notice of Complaint issued on February 20, 2018,² PJM Interconnection, L.L.C. (“PJM”) submits this Answer to the Section 206 Complaint of Public Citizen, Inc. (“PCI”) filed in the above referenced proceeding (the “Complaint”).

I. INTRODUCTION

On February 20, 2018, PCI filed the Complaint alleging potential violations of the Federal Power Act (“FPA”) and requesting that the Commission require PJM to “disclose all political-related spending, including campaign contributions and lobbying expense, and clearly document which political expenses are funded through its filed rates.”³ The Complaint should be dismissed because (i) the Commission has already addressed and rejected the arguments which PCI makes in support of its Complaint, and (ii) PJM is not engaged in impermissible political

¹ 18 C.F.R. §§ 385.206(f) and 213 (2017).

² *Public Citizen, Inc. v. PJM Interconnection, L.L.C.*, Notice of Complaint, Docket No. EL18-61-000 (February 20, 2018) (setting the comment date for March 12, 2018).

³ *Complaint* at page 2. The Complaint does not include page numbers and, therefore all page number references are based on the sequence of pages with the first page of the complaint with the captioned proceeding being page 1.

activity, campaign contributions, or unrecoverable lobbying expenses.⁴ Indeed, PJM has undergone Commission audits during the period in question and has received positive audit findings. In addition, the Complaint is replete with speculative and unsubstantiated allegations which simply do not meet the requirements of Section 206 of the Federal Power Act. Moreover, consistent with Commission precedent, the expenses identified in the Complaint are for recoverable lobbying, educational activities and monitoring and communicating on issues related to PJM's core function or mission, or advocacy on matters in the collective best interest of PJM and its members.

Finally, the PCI's allegations concerning the level of material available to members of the Finance Committee are, by its own admission, speculative.⁵ In fact, as discussed below, PJM makes available to members of the Finance Committee (and obviously Commission Staff upon request through the auditing process and otherwise), supporting information on the budgets and expenses of PJM that they review. PJM reiterates that commitment here should the Commission be seeking such a commitment in disposing of this Complaint.

II. ANSWER

A. PCI's Complaint is a Collateral Attack on the Commission's Stated Rate Order

There is nothing new alleged in the Complaint. PCI's claims that PJM's expenses associated with Ray Billups and Ogilvy Government Relations ("Ogilvy") and its PJM membership status are repeats of the same claims made by PCI in PJM's stated rate proceeding in Docket No. ER17-249-000. PCI's protest in that proceeding claimed that "PJM fails to

⁴ *Complaint* at page 1.

⁵ *Complaint* at pages 4-5.

disclose details of its political lobbying expenses” citing as support the expenses associated with Mr. Billups and Ogilvy.⁶ In response to those allegations, the Commission held that “the Commission permits RTOs to recover expenses related to RTO informational and educational efforts, and the Finance Committee approved these expenditures as part of the stated rate.”⁷ No party to Commission proceedings is entitled to endlessly re-litigate the identical issue. Therefore, the Complaint should be dismissed as a collateral attack in the Commission’s Stated Rate Order on Tariff Rate Filing.

B. Fees and Expenses Associated with RTO Educational and Communication Activities and Activities Undertaken in Market Participants’ Collective Best Interests Are Reasonable and Recoverable

Commission precedent permits rate recovery of activities representing an RTO’s efforts to keep informed of all outstanding or future events that can affect the RTO and its members.⁸ The Commission has also authorized rate recovery of the costs and expenses associated with communications with state and federal legislators regarding RTO operations even when relating to specific legislation because “they were directly related to existing or future operations, were undertaken in the market participants’ interest and were in furtherance of legitimate RTO objectives.”⁹

⁶ Motion to Intervene and Protest of Public Citizen, Inc., Docket No. ER17-249-000 (November 21, 2016).

⁷ *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,236 at P 24 (2016) (“Stated Rate Order on Tariff Rate Filing”), citing *ISO New England*, 117 FERC ¶ 61,070 (2006) (“*ISO NE I*”) “(allowing informational and educational expenses to be recovered); *aff’d sub nom Braintree Elec. Light Dep’t v. FERC*, 550 F.3d 6, 16 (D.C. Cir. 2008) (finding such expenditures reasonable given the ‘potential impingement of government action on all stakeholders’ and the need for legislative access to information regarding RTO activity).”

⁸ See *ISO NE I* at P48.

⁹ *ISO NE I* at P 50.

In *Braintree*, affirming the Commission’s holdings in *ISO NE I* and *ISO NE II*, the court referred to the Commission’s articulation of “a line between... informational lobbying (recoverable) and more political variants (not recoverable).”¹⁰ On that point, the Commission held in *ISO NE I*:

*(E)xpenditures are properly recoverable as they clearly: (1) represented an educational, communicative function of ISO-NE essential to its mission of efficiently and reliably operating the New England markets; (2) supported specific legislation that ISO-NE determined was in the collective best interests of its customers/stakeholders and from which it could not reap any financial or other benefit; and (3) did not include the types of activities that would not be recoverable, such as participation in Political Action Committees, candidate fundraising, entertainment expenses (e.g., meals, sporting events, junkets) and other activities not at issue here that do not directly relate to ISO-NE’s operations. We recognize that, although ISO-NE’s informational activities included highly controversial subject matters, ... it is clear that, in providing information on these subjects, ISO-NE was attempting to benefit its market participants.*¹¹

In other words, the Commission will allow for recovery of the costs of certain RTO activities that might otherwise be viewed as lobbying activities,¹² because they are (i) directly related to existing or future operations, (ii) undertaken in the market participants’ interest, and (iii) in furtherance of legitimate RTO objectives.¹³

1. *The Membership Fees for the Democratic Governors Association and the Republican Governors Association are Recoverable Operational Expenses.*

The Complaint inaccurately refers to the Democratic Governors Association (“DGA”) and the Republican Governors Association (“RGA”) as “Political Action Committees” and

¹⁰ See *Braintree Elec. Light Dep’t v. FERC*, 550 F.3d 6, 10 (D.C. Cir. 2008) (“*Braintree*”).

¹¹ *ISO NE I* at P 49.

¹² See, e.g., 18 CFR Part 101 (Account 426.4).

¹³ *ISO NE I* at P 50.

PJM's "council" membership fees to those associations as "campaign contributions."¹⁴ First, the DGA and the RGA, although they are political organizations under Section 527 of the U.S. Internal Revenue Code, are not Political Action Committees ("PACs") as that term is used in federal law.¹⁵ The membership fees paid to the DGA and RGA are used for various purposes including policy development, program support, and policy conferences.¹⁶ As a result, the Complaint itself starts with a premise which is not consistent with the actual legal status of these organizations.

Most importantly, PJM's reason for participating in these associations is to keep informed on policy initiatives impacting the wholesale markets, bulk power system operations and infrastructure and, as a neutral information provider, to share relevant details about such matters with state policy makers. Both organizations host policy forums on energy topics which range from market issues to security issues associated with utility infrastructure. For example, the recent DGA meeting in Washington D.C. last month included a session on planning and recovering from natural disasters, as well as a panel on taxes. That latter issue in the context of RTO operations was particularly relevant to both PJM and its members as Pennsylvania recently considered taxing PJM transactions. Also, PJM has been called upon to educate and inform state government officials. In this vein, PJM has participated in a panel discussion on infrastructure and integrating new generation resources. PJM's memberships in the RGA and DGA business councils are directly related to advancing RTO interests and to performing PJM's education and

¹⁴ *Complaint* at page 3.

¹⁵ *See* Bipartisan Reform Act of 2002, 2 U.S.C. § 441 (2002), (amending Title III of the Federal Election Campaign Act, 2 U.S.C. § 431 (1971)).

¹⁶ 26 U.S.C. §527.

communication functions. Attending such meetings is a cost-effective way of engaging on policy matters where the governors of multiple of PJM's thirteen states and their staffs are present.¹⁷

Further evidence of PJM's lack of intent to support specific candidates or favor political parties through its membership of the DGA and RGA is the fact that PJM maintains memberships in both governors associations. To be clear, PJM does not make contributions to PACs or candidates' campaign funds¹⁸.

2. *The Specific Services Provided to PJM by Consultants or Lawyers who Undertake Activities and Register as Federal or State Lobbyists for PJM are Recoverable Operational Expenses.*

The consulting fees paid to the entities mentioned in the Complaint are properly categorized as operational expenses. The Complaint paints all lobbying activities with a very broad brush and then reaches sweeping unsubstantiated conclusions. For one, the mere fact of registering as a state or Federal lobbyist is not, in and of itself, dispositive of whether the specific type of activities he/she undertakes for PJM is recoverable by PJM because the Commission permits cost recovery by RTOs of such costs even if the activity is lobbying if it is in the collective best interests of PJM and its members.¹⁹ Expenditures for services provided by

¹⁷ There has been increasing interest and involvement by state policymakers, legislators and even the state executive branch in the activities of PJM. Issues ranging from physical and cyber security of the grid, to aging transmission infrastructure, to distributed generation resources and demand response, to the carbon emissions of generating stations have animated state interests in core PJM functions. No longer is the RTO/ISO interaction with the states more or less exclusively through the state commissions. The nature of these policy interests has resulted in PJM increasingly over recent years being called on to educate or inform elected state officials and keep abreast of state initiatives in areas which impact RTO operations and markets. The decisions made by PJM to participate, in both governors' associations reflects the changing identity of PJM's state constituencies.

¹⁸ PJM files reports with the Congress every six months affirming that it has not made Federal congressional political contributions nor provided gifts or travel to members of Congress, and PJM complies with similar state ethics disclosure reporting requirements.

¹⁹ See *ISO NE I* at footnote 64 (citing, *Ohio Edison Company*, 113 FERC ¶ 61,416, at 61,298 (1984)).

the entities identified in the Complaint (*e.g.*, Ray Billups, Ogilvy, Squire Patton Boggs, The Vectre Corporation, etc.) are for purposes of outreach, education and other activities directly related to PJM’s RTO operations.

For example, in 2017, PJM with its Pennsylvania-based consultants educated members of the Pennsylvania House and Senate and the Governor’s office on the impacts of a potential state tax on market participants’ transactions in PJM. Through this effort, PJM explain the jurisdictional issues of such a potential tax on wholesale energy market transactions, including virtual transactions, given the interstate market. Had this tax been enacted, it promised not just to disrupt PJM’s market operations; it likely would have increased the costs of wholesale electricity to PJM members and end users in Pennsylvania and other states given the integrated nature of transactions flowing through the PJM markets.

Lobbying of this type that is in the collective best interests of PJM and its members is not prohibited and is recoverable.²⁰ In accord, the Commission denied a rehearing request in *ISO NE II* finding that “the designation of expenditures for tax purposes as ‘lobbying’ expenditure does not preclude recovery of those costs from rate payers.”²¹

3. *PCI’s Claims pertaining to PJM’s D.C. Office and Outside Counsel are without Merit.*

PCI’s claims regarding PJM’s D.C. offices located at the same address in Washington, D.C. as PJM’s outside counsel, Wright & Talisman are similarly without merit. First, PCI speculates in regard to Wright & Talisman’s legal service on behalf of PJM that “*it is possible* that his arrangement includes hosting or assisting PJM’s own direct lobbying (emphasis

²⁰ *ISO NE I* at P 49.

²¹ *ISO NE I* at P 23.

added).”²² As the Complaint itself recognizes, this is pure speculation without support in fact and, therefore, not a basis to support a Section 206 complaint. It is well known that PJM uses Wright & Talisman as outside counsel in a host of legal services representing PJM before its regulators, including this Commission, and courts. Wright & Talisman, like many D.C. law firms, may offer lobbying services; however, Wright & Talisman has not engaged in lobbying activity for PJM in the relevant time period covered by the Complaint (Wright & Talisman filed a lobbying termination in 2005), and indeed, the referenced person is no longer with the firm.²³ Second, PJM rents office space from Wright & Talisman for Mr. Craig Glazer. This arrangement is an arm’s length transaction and provides no basis for any claim or relief to PCI.

C. PCI’s Claim that PJM Must Publically Disclose Additional Information is Without Merit

PCI’s allegation that PJM must publicly disclose details on lobbying expenditure or PAC contribution is wrong. First, as explained above, PJM does not make any contributions to PACs or candidate campaign contributions. Second, PJM currently accounts for all such expenses as Operating Expenses in accordance with the Commission’s Uniform System of Accounts.²⁴

PCI’s claim that PJM does not properly disclose to the Commission expenditures in FERC Form 1, Account No. 426.4 is inconsistent with the Commission’s audit reports and findings in 2007 and in 2009. On July 19, 2007, the Commission issued an audit report which included tests of PJM’s accounting records to validate the accuracy of the information filed with

²² *Complaint* at page 7.

²³ *See Complaint* at page 7.

²⁴ 18 C.F.R. Part 101. As detailed above, because of the informational and educational nature of the activities performed by the consultants and organizations identified in the Complaint, none of PJM’s expenditures constitute expenses included in Account No. 426.4. These expenses are designed to address matters of direct operating concern to PJM and its members to ensure reliable operations and competitive energy markets. Thus, these expenses were properly recorded in Account No. 401 as evidenced by prior Commission Audit findings.

the Commission in its FERC Form 1.²⁵ The Commission completed another audit and issued an audit report in 2009 which was approved by the Commission in an order issued on August 26, 2010.²⁶ The 2009 audit also evaluated whether PJM is operating in compliance with the Commission's accounting regulations contained in the Uniform System of Accounts at 18 C.F.R. Part 101 and the financial reporting requirements contained in FERC Form 1. The audit covered the period January 1, 2007 to February 2009.²⁷ In both audits, the Commission found no issues with PJM's compliance with financial reporting requirements in the FERC Form Nos. 1 pertaining to expenditures included in Account No. 401 and Account No. 426.4. Such findings support PJM's position that its expenditure accounting and reporting to the Commission complies with the Uniform System of Accounts and the applicable regulations. Thus, PCI's allegations are unsubstantiated and do not meet the requirements for a complaint pursuant to Section 206 of the FPA.

PCI's assertion that additional disclosures to PJM's Finance Committee are necessary is also misplaced. In PJM's stated rate filing made on October 31, 2016,²⁸ and in the Prepared Direct Testimony of Suzanne S. Daugherty on Behalf of PJM (the "Testimony") submitted therewith, PJM provided the details of the budgeting process and the role of the Finance Committee in the annual review of PJM's operating and capital budgets.²⁹

In the Stated Rate Transmittal Letter, PJM further explained the important customer protections under the Finance Committee procedures:

²⁵ Letter dated July 19, 2007, Docket No. FA07-7-000.

²⁶ *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,173 (2010) ("Order Approving Audit").

²⁷ See Letter dated February 9, 2009, Docket No. PA09-10-000, and *Order Approving Audit* at P 1.

²⁸ *PJM Interconnection, L.L.C.*, ("Stated Rate Transmittal Letter"), Docket No. ER17-249-000 (October 31, 2016).

²⁹ See Testimony at pages 6-9, 21-24, and Exhibit No. PJM-004 pages 1 and 7.

*Stakeholders elect representatives to the Finance Committee, which has the responsibility of reviewing, questioning, and making recommendations concerning, PJM's annual capital and expense budgets each year, before they are approved by the PJM Board of Managers ("PJM Board"). The stakeholder-reviewed budget substantially determines each year the costs that customers will bear (after refunds) for PJM's administrative services. PJM also reviews with the Finance Committee, throughout the year, PJM's unaudited quarterly financial reports, and audited annual financial reports, thereby permitting stakeholder review of actual expenses and revenues, variances from PJM's budget, and expected quarterly refunds. These information exchange requirements are embodied in both the Operating Agreement and a protocol that can be amended only by a majority vote of the Finance Committee, ensuring that these protections cannot be taken away or modified without agreement of stakeholder representatives on the Finance Committee.*³⁰

The Testimony provided details on the required disclosures to the Finance Committee under the Financial Review, Reporting and Communication Protocol ("Protocol").³¹ The Finance Committee also is responsible for reviewing proposed changes to PJM's administrative rates and worked collaboratively and productively with PJM on the rate change in the fall 2016 filing.³²

The PJM Operating Agreement requires PJM to make available for Finance Committee review annual and multi-year operating and capital budgets as well as "additional financial information regarding other matters pertaining to the appropriate level of PJM's rates, proposed major new investments and allocation and disposition of funds as may be reasonably requested by the Finance Committee to assist it with its review."³³ Under the Protocol and the pursuant to the Operating Agreement, PJM reviews with the Finance Committee all capital and operating

³⁰ *Stated Rate Transmittal Letter* at pages 3-4.

³¹ *Testimony* at page 8.

³² *Stated Rate Transmittal Letter* at page 3.

³³ Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement") at § 7.5.1(c).

expense budgets for each calendar year. In addition, preliminary budgets are compiled and presented to the Finance Committee in August each year.³⁴

Thus, there is transparency with the PJM stakeholders through the Finance Committee as PJM's budgets are prepared. The operational expenses in PJM's annual budgets, forecast and actual results reviewed with the Finance Committee include the consulting fees and the membership fees that are the subject of the Complaint. PJM is always prepared to respond to the requests of its members if greater detail and granularity is requested in the Finance Committee information; however, no members have requested such information nor has any member complained that information submitted to the Finance Committee in the budgeting process is insufficient.³⁵ Nevertheless, as noted previously, PJM reiterates herein its commitment to provide supporting information to the Finance Committee in response to such inquiries.

Because of the informational and educational nature of the activities funded by the entities and organizations identified in the Complaint, none of PJM's expenditures constitute expenses that should be reported in the Uniform System of Accounts, Account No. 426.4 because they do not represent political activities of PJM. Rather, these expenses are legitimate operating expenses of PJM in support of its core functions. Thus, these expenses are properly recorded in Uniform System of Accounts, Account No. 401 (Operation Expense).³⁶

In any event, the reporting of these expenses under the Uniform System of Accounts is not determinative of whether they are recoverable.³⁷ The Commission has distinguished between

³⁴ *Testimony* at page 6.

³⁵ As discussed in Part II B. below, PCI is not a PJM member.

³⁶ *See* 18 C.F.R. § 101, Account 401 (Operation Expense).

³⁷ *ISO NE I* at P 46.

RTOs/ISOs and traditional investor owned utilities (with shareholder profit expectations) in finding that these types of expenditures (even if related to lobbying) are recoverable by RTOs/ISOs. The Commission noted “(i)n the absence of disparate ratepayer/shareholder interests that may exist for investor owned utilities, it is easier to see that the ISO/RTO is pursuing activities that benefit its ratepayers.”³⁸ Thus, Commission precedent has placed great weight on the impartiality and independence of an RTO with no profit motive in allowing recovery of costs in monitoring legislative activity even if reported in Account No. 426.4 so that it may consider how such activity might affect its operations and markets.³⁹

D. PCI’s Membership Claims are without Merit and Already Rejected by the Commission

In the stated rate proceeding Order Denying Rehearing, the Commission addressed PCI’s argument that it should be accorded the rights of a PJM voting member in the PJM stakeholder process.⁴⁰ In the Complaint, PCI again asserts that it is “unable to address the issues raised in this complaint in PJM’s internal Stakeholder process because PJM informed Public Citizen in 2015 that (it) is not qualified to serve as a PJM member.” In the stated rate proceeding, however, PCI pointed out that it applied for PJM membership in 2015, but it was informed it did not qualify under the PJM Operating Agreement, for voting rights in that process.⁴¹ The Commission found that PCI can join PJM as a non-voting member and express its views on proposals at PJM even if PCI does not meet PJM’s criteria for membership as a voting member.⁴² Thus, PCI’s

³⁸ *Id.* at 47.

³⁹ *See Braintree*, at 10.

⁴⁰ *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,162 at P2 (2017) (“Stated Rate Rehearing Order”).

⁴¹ *Stated Rate Rehearing Order* at P 2.

⁴² *Id.* at P 3.

renewed claim that PJM has “barred PCI from membership”⁴³ is inaccurate and has previously been addressed by the Commission. PCI did not complete its application to join PJM as a non-voting member and again has no claim for relief here. Rather, despite the Commission’s clarification that it could do so, PCI instead bypassed the PJM membership process and stakeholders and raised this issue yet again before this Commission.

III. COMMUNICATIONS

Correspondence and communications with respect to this filing should be sent to, and PJM requests the Secretary include on the official service list, the following:

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

Steven R. Pincus
Associate General Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Audubon, PA 19403
Ph: (610) 666-4370
steven.pincus@pjm.com

IV. ADMISSIONS AND DENIALS

In accordance with Rule 213(c)(2) of the Commission’s Rules of Practice and Procedure,⁴⁴ except as stated in this Answer, PJM does not admit any facts in the form and manner stated in the Complaint. To the extent that any fact or allegation in the Complaint is not specifically admitted in this Answer, it is denied.

⁴³ *Complaint* at page 2.

⁴⁴ 18 C.F.R. § 385.213(c)(2) (2016).

V. CONCLUSION

PJM respectfully requests that the Commission consider this Answer and dismiss the Complaint.

Respectfully submitted,

By: /s/ Steven R. Pincus

Craig Glazer
Vice President – Federal Government Policy
PJM Interconnection, L.L.C.
1200 G Street, NW, Suite 600
Washington, D.C. 20005
Ph: (202) 423-4743
Fax: (202) 393-7741
craig.glazer@pjm.com

Steven R. Pincus
Associate General Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Audubon, PA 19403
Ph: (610) 666-4370
Fax: (610) 666-8211
steven.pincus@pjm.com

*Counsel for
PJM Interconnection, L.L.C.*

March 9, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on those parties on the official Service List compiled by the Secretary in these proceedings.

Dated at Audubon, Pennsylvania this 9th day of March, 2018.

/s/ Steven R. Pincus
Steven R. Pincus
Associate General Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Audubon, PA 19403
Ph: (610) 666-4370
Steven.pincus@pjm.com