

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

**ISO New England Inc.
New England Power Pool**

)
)
)

Docket No. ER21-1637-000

**COMMENTS OF PJM INTERCONNECTION, L.L.C. TO MOTION FOR ADOPTION
OF PROTECTIVE ORDER OF THE NEW ENGLAND POWER POOL PARTICIPANTS**

Pursuant to the Federal Energy Regulatory Commission’s (“Commission”) Order of the Chief Judge Shortening Answer Period,¹ PJM Interconnection, L.L.C. (“PJM”) hereby submits these brief comments to the Motion for Adoption of Protective Order filed by the New England Power Pool Participants (“NEPOOL”) in the above-referenced proceeding.²

I. COMMENTS

As an initial matter, PJM does not take any position on the substance of the jump ball proposals filed by ISO New England Inc. or NEPOOL in this docket.³ Rather, PJM’s comments are limited to NEPOOL’s request to seek confidential and proprietary data from an independent third-party consultant. In particular, requiring the disclosure of specific project costs used by independent consultants, even subject to a protective order, could hinder PJM’s ability in the upcoming quadrennial review⁴ to retain an independent consultant that has specialized knowledge regarding the cost of new entry, engineering procurement and construction

¹ Order of the Chief Judge Shortening Answer Period, Docket No. ER21-1637-000 (Apr. 14, 2021).

² *ISO New England Inc. and New England Power Pool*, Motion for Adoption of Protective Order, Request for Expedited Action and Shortened Comment Period of the New England Power Pool, Docket No. ER21-1637-000 (filed Apr. 13, 2021).

³ *ISO New England Inc. and New England Power Pool*, Joint Filing Regarding Offer Review Trigger Prices, Docket No. ER21-1637-000 (filed Apr. 7, 2021).

⁴ PJM Open Access Transmission Tariff, Attachment DD, section 5.10.

agreements, and other facts relating to actual new entrants. This is because many, if not all, of the independent consultants with actual knowledge and experience of the costs to build various resources in the energy industry have non-disclosure agreements with their respective clients. Thus, the independent consultants that PJM has engaged with historically have not provided PJM with the actual costs that are incurred in developing specific projects. Instead, PJM has relied on the benchmark data based on the independent consultants' proprietary database and continuous interaction with their respective clients and vendors.⁵ The Commission has historically found such evidence sufficient to support capital cost estimates.⁶ Given that ensuring the appropriate balance between protecting confidential data (and in particular non-disclosure agreements that clients of consultants often require) versus intervenor's rights to discovery is fact-specific, the Commission should avoid an overly broad ruling in this case and indicate its intention to decide these discovery disputes on a case-by-case basis.⁷

Independent consultants play a crucial role in providing actual and up-to-date cost information and the ability to seek such expertise should be maintained. The risk of public disclosure – even subject to a protective order – may hinder PJM's ability to engage with independent consultants as it would be difficult to retain any independent consultant that is

⁵ See *PJM Interconnection, L.L.C.*, Periodic Review of Variable Resource Requirement Curve Shape and Key Parameters, FERC Docket No. ER19-105-000, Att. E, Exhibit No. 2, 2018 CONE Study, p. 3 (filed October 12, 2018) (“Sargent & Lundy (S&L) estimated plant proper capital costs—equipment, materials, labor, and the engineering, procurement, and construction (EPC) contracting costs—based on a complete plant design and S&L's proprietary database on actual projects. S&L and Brattle then estimated the owner's capital costs, including owner furnished equipment, gas and electric interconnection, development and startup costs, land, inventories, and financing fees using S&L's proprietary data and additional analysis of each component.”).

⁶ See *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,029 (2019); *New York Independent System Operator, Inc.* 175 FERC ¶ 61,012 (2021).

⁷ In some circumstances, it may be possible to aggregate or otherwise mask confidential data so that individual client information remains protected. However, such requests should be reviewed on a case-by-case basis given that the cost information on certain projects may be limited.

willing to disclose confidential and proprietary project specific costs given the non-disclosure agreements with their respective clients. Such an outcome would clearly not be in the public's interest as the ability for PJM to fulfill its functions as a regional transmission operator may require retaining independent consultants who have access to market sensitive data.

II. CONCLUSION

Based on the foregoing, PJM urges the Commission to limit the scope of its order in this docket so as to not unduly hinder the ability of PJM, or other regional transmission operators, to retain independent consultants when needed in other proceedings.

Respectfully submitted,

/s/ Chenchao Lu

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

Chenchao Lu
Senior Counsel
PJM Interconnection, L.L.C.
2750 Monroe Boulevard
Audubon, Pennsylvania 19403
(610) 666-2255
chenchao.lu@pjm.com

On behalf of PJM Interconnection, L.L.C.

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 16th day of April 2021.

/s/ *Chenchao Lu*

Chenchao Lu