

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

PJM Interconnection, L.L.C.

)

Docket No. ER22-2110-000

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

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission (“Commission”) Rules of Practice and Procedure,¹ PJM Interconnection, L.L.C. (“PJM”) respectfully submits this Motion for Leave to Answer and Answer to the September 16, 2022 Motion to Intervene – Out of Time and Protest filed by Dr. David O. Kuranga.² PJM does not oppose Dr. Kuranga’s request to intervene out of time but submits that his requested relief—being moved to the front of PJM’s interconnection queue³—and his challenges to PJM’s June 14, 2022 filing to reform its interconnection process⁴, although certainly well-intentioned, do not support rejection of the June 14 Filing to implement needed interconnection reforms that were approved overwhelmingly by stakeholders, including those with projects similar to Dr. Kuranga’s.

I. MOTION FOR LEAVE TO ANSWER

While an answer to a protest is not a matter of right under the Commission’s regulations,⁵ the Commission routinely permits such answers when the answer provides

¹ 18 C.F.R. §§ 385.212, 385.213.

² *PJM Interconnection, L.L.C.*, Motion to Intervene – Out of Time Protest of David O. Kuranga, Ph.D., Docket No. ER22-2110-000 (Sept. 16, 2022) (“Protest”).

³ See Protest at ¶¶ 1, 4.

⁴ *PJM Interconnection, L.L.C.*, Tariff Revisions for Interconnection Process Reform, Request for Commission Action by October 3, 2022, and Request for 30-Day Comment Period, Docket No. ER22-2110-000 (June 14, 2022) (“June 14 Filing”). Capitalized terms not defined herein have the meaning set forth in the June 14 Filing or the PJM Open Access Transmission Tariff (“Tariff”).

⁵ 18 C.F.R. § 385.213(a)(2).

useful and relevant information that will assist the Commission in its decision-making process,⁶ assures a complete record in the proceeding,⁷ and provides information helpful to the disposition of an issue.⁸ This answer satisfies these criteria, and PJM therefore respectfully requests that the Commission accept this pleading.

II. RESPONSE TO DR. KURANGA

An explanation and justification of the June 14 Filing is provided in that filing, as well as in PJM's August 2, 2022 answer⁹ filed in this proceeding. Dr. Kuranga's proposed project is a ten megawatt ("MW") combined solar/wind facility associated with PJM Queue No. AG2-282.¹⁰ Based on information contained in the Protest and in other filings, PJM understands the project is intended to be a small power production qualifying facility ("QF") that initially planned to sell its output to Buckeye Power, Inc. ("Buckeye Power") pursuant to section 210(m)¹¹ of the Public Utility Regulatory Policies Act of 1978 ("PURPA").¹² However, Buckeye Power was relieved of its obligations to enter new contracts or to purchase electric energy and capacity from small power production QFs

⁶ See, e.g., *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,057, at P 94 (2012) (accepting answers that "provided information that assisted us in our decision-making process"); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 26 (2008) (same); *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,083, at P 23 (2007) (permitting answer to protests when it provided information that assisted the Commission in its decision-making process).

⁷ See, e.g., *Pac. Interstate Transmission Co.*, 85 FERC ¶ 61,378, at 62,443 (1998), *order on reh'g*, 89 FERC ¶ 61,246 (1999); see also *Morgan Stanley Cap. 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").

⁸ See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100, at 61,287 n.11 (1999).

⁹ *PJM Interconnection, L.L.C.*, Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C., Docket No. ER22-2110-000 (Aug. 2, 2022) ("August 2 Answer").

¹⁰ See Protest at ¶ 2; see also New Services Queue, PJM Interconnection, L.L.C., <https://pjm.com/planning/services-requests/interconnection-queues.aspx> (last visited Sept. 30, 2022) (type AG2-282 in the "Queue/OASIS ID" box and hit enter).

¹¹ 16 U.S.C. § 824a-3(m).

¹² Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117 (codified as amended in scattered sections of 15, 16, 42, and 43 U.S.C.).

under PURPA in an order issued September 14, 2022.¹³

Dr. Kuranga asserts that because his proposed project was submitted in the AG2 queue window, it will not be eligible to proceed under PJM's proposed "fast-lane" process, which will hamper his project's ability to obtain financing.¹⁴ Dr. Kuranga states that PJM's proposal for the first time does not distinguish between small and large generators, and that the June 14 Filing discriminates against small generators in the AG2 queue.¹⁵ Dr. Kuranga requests that his project be moved to the front of the queue and given emergency relief and priority.¹⁶

With all due respect to Dr. Kuranga's position and concerns, his protest and requested relief does not support rejection of PJM's interconnection reform filing that was approved overwhelmingly by stakeholders, including those with projects similar to Dr. Kuranga's. . Dr. Kuranga's claims that limiting the Expedited Process to Interconnection Requests submitted during the AE1 to AG1 queue windows discriminates against AG2 small generators are erroneous, as the transition mechanism and Expedited Process apply on a neutral non-discriminatory basis to all generators regardless of size, fuel source or QF status. The operative difference between the AG1 and AG2 queue windows is the date each closed and the relationship those closing dates have to PJM's interconnection process

¹³ See *Buckeye Power, Inc.*, 176 FERC ¶ 61,157 (2021) ("Buckeye Power Order"); see also Protest at ¶ 2.

¹⁴ Protest at ¶¶ 2-3. It is not entirely clear to what process Dr. Kuranga refers, as there is no "fast-track process starting October 1, 2022" (Protest at ¶ 3) proposed in the June 14 Filing. It is correct, however, that an Interconnection Request, of any size, submitted during the AE1-AG1 queue windows may be eligible for the proposed Tariff, Part VII Expedited Process and transition mechanisms, while an Interconnection Request submitted in a later queue window will be subject the proposed Tariff, Part VIII procedures. See June 14 Filing at 11-12, 32.

¹⁵ Protest at ¶ 2.

¹⁶ Protest at ¶¶ 1 ("[i]n order for us to secure this PPA, we need to be given immediate priority consideration by PJM and moved to the top of the queue.") & 4 ("unless we are moved to the top of the entire queue list and given emergency relief and priority, we will likely become a casualty as I predicted").

reform stakeholder proceedings.¹⁷ Moreover, as PJM previously explained, the proposed transition mechanism set forth in the June 14 Filing is a balanced approach that was a key part of that stakeholder process,¹⁸ and the Commission has recognized that there is nothing improper about using objective criteria, such as a specified cut off date, to develop a transition mechanism.¹⁹

To the extent Dr. Kuranga is concerned that PJM may be eliminating fast-track procedures for small generators,²⁰ the June 14 Filing utilizes Decision Points whereby a project does that not contribute to the need for any network upgrades and does not need any subsequent studies may advance to the interconnection-related agreement stage without going through the rest of the process with the other projects in the Cycle.²¹

¹⁷ The AG1 queue window opened April 1, 2020 and closed September 30, 2020, and the AG2 queue opened October 1, 2020 and closed March 31, 2020. PJM limited eligibility for the Expedited Process to Interconnection Requests submitted during the AE1 through AG2 queue windows to coincide with the October 2020 commencement of the stakeholder process that resulted in the June 14 Filing.

¹⁸ See June 14 Filing at 10-11, 13; August 2 Answer at 9-11.

¹⁹ See *Tri-State Generation & Transmission Ass'n.*, 175 FERC ¶ 61,128, at P 14 (2021) (stating “the fact that a particular project is not ready does not, in and of itself, render Tri-State’s new first-ready, first-served approach unjust and unreasonable, nor does it warrant a further extension of the transitional readiness window. As the Commission explained in the PacifiCorp queue reform proceeding, while a specific proposed readiness cutoff ‘will exclude certain interconnection customers’ from participation in the transition cluster, ‘any cutoff date will inevitably have that effect’” (quoting *PacifiCorp*, 171 FERC ¶ 61,016, at P 25 (2020))); *PacifiCorp*, 171 FERC ¶ 61,112, at P 144 (approving use of a transition period cutoff date and finding proposed transition process is “a reasonable means . . . to implement the Queue Reform Proposal and resolve the interconnection queue backlog”), *order on clarification & reh’g*, 173 FERC ¶ 61,016 (2020) (affirming prior findings and also noting that a transition mechanism will invariably affect certain customers, and that delaying the transition mechanism date would exacerbate the problem the queue reform was intended to address); *Midcontinent Indep. Sys. Operator*, 158 FERC ¶ 61,003, at P 59 (2017) (accepting transition dates and transition mechanism subject to minor compliance filing requirement, stating “the proposed plan . . . avoids the creation of an unwieldy study group that may cause further backlog in the queue, and provides more precise information about the projects that will be grouped together for study and explains in more detail the timing of these studies”).

²⁰ Protest at ¶ 3.

²¹ June 14 Filing at 28; *id.* at 34 n.102 (“Based on the results of the Phase I or Phase II System Impact Study, PJM may be able to accelerate the treatment of a New Service Request such that the Project Developer or Eligible Customer can enter into a final GIA or other agreement under Tariff, Part IX, without undergoing further studies.”); proposed Tariff, Part VII, Subpart D, sections 309(A)(2) and 311(A)(2)(d) and proposed Tariff, Part VIII, Subpart C, sections 406(A)(1) and 408(A)(1)(d). Smaller sized projects are much less likely to require upgrades, and have a much higher chance of being able to accelerate to a final interconnection-related agreement.

Accordingly, small projects such as Dr. Kuranga's can be eligible for shortened, accelerated procedures if they meet the related criteria.

Further, Dr. Kuranga is incorrect that the Buckeye Power Order presumed his project would have "immediate access to the PJM marketplace."²² Nothing in the Buckeye Power Order indicates the Commission's findings were based on a determination that the affected QFs have immediate access to PJM markets; instead, the key element is whether a qualifying facility has *nondiscriminatory* access to competitive wholesale markets or transmission or interconnection services under a Commission-approved open access transmission tariff.²³ Neither these sections of PURPA nor the Commission regulations require "immediate access" to PJM markets as such a standard would itself create discriminatory access relative to other projects pending in the queue. In fact, the Commission specifically found "contrary to Dr. Kuranga's claims, the fact that his potential QF has entered the PJM Queue would indicate that the potential QF indeed has access to the PJM market."²⁴ The transition mechanism was also a key part of the stakeholder compromise that resulted in the June 14 Filing, and rather than denying QFs such as Dr. Kuranga's project nondiscriminatory access to PJM markets, it provides QFs

²² See Protest at ¶¶ 4, 5.

²³ See PURPA section 210(m)(1), 16 U.S.C. § 8241a-3(m)(1); PURPA section 292.309(a), 18 C.F.R. § 292.309(a). PURPA section 292.309(a)(3), 18 C.F.R. § 292.309(a)(3) establishes a rebuttable presumption that such access is available in PJM. A small power producer QF between five and 20 MWs may rebut this presumption by demonstrating "*unique* circumstances impacting the time or length of interconnection studies or queues to process the small power production facility's interconnection request" or other factors. PURPA section 292.309(e)(2)(ii), 18 C.F.R. § 292.309(e)(2)(ii) (emphasis added). However, Dr. Kuranga failed to make this showing. In the Buckeye Power Order, the Commission found that Dr. Kuranga failed to explain "whether the delay in the interconnection process is due to unique factors for his specific generator or due to factors affecting PJM's interconnection process more generally. Therefore, Buckeye Power's Application to terminate its and its members' mandatory purchase obligation will not interfere with Dr. Kuranga's potential QF's access to the PJM market." Buckeye Power Order at P 15,

²⁴ Buckeye Power Order at P 15. The term "immediate access" used in the Protest does not appear in the Buckeye Power Order.

with the nondiscriminatory and comparable access to PJM markets as any other project.

III. CONCLUSION

For the reasons set forth above, PJM requests that the Commission accept this answer, and reject the Protest and the relief requested therein.

Respectfully submitted,

/s/ Wendy B. Warren

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September 30, 2022

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 30th day of September 2022.

/s/ David S. Berman

David S. Berman

Attorney for

PJM Interconnection, L.L.C.