

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

PJM Interconnection, L.L.C.

)

Docket No. ER23-712-000

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

PJM Interconnection, L.L.C. (“PJM”) hereby submits this Motion for Leave to Answer and Limited Answer (“Answer”)¹ to the protest filed jointly by the Long Island Power Authority (“LIPA”) and Neptune Regional Transmission System, LLC (“Neptune”) (jointly, “Protestors”)² of PJM’s December 22, 2022 filing³ in this docket. For the reasons set forth below, PJM respectfully requests that the Commission: (i) grant this motion for leave to answer, (ii) reject the Protest, and (iii) accept the Tariff revisions proposed in the 2023 Cost Allocation Update Filing, effective January 1, 2023.

I. MOTION FOR LEAVE TO ANSWER

PJM respectfully requests leave to file this Answer to address arguments raised in the Protest. Although the Commission’s Rules of Practice and Procedure generally do not permit an answer to protests,⁴ the Commission routinely allows such answers when they provide useful or relevant information that will assist the Commission in its decision-making process, clarify the issues, assure a complete record in the proceeding, provide information helpful to the disposition

¹ PJM submits this Answer pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”). 18 C.F.R. §§ 385.212 and 385.213 (2022).

² *PJM Interconnection, L.L.C.*, Protest of the Long Island Power Authority and Neptune Regional Transmission System, LLC, Docket No. ER23-712-000 (Jan. 12, 2023) (“Protest”).

³ *PJM Interconnection, L.L.C.*, 2023 RTEP Annual Update Filing, Docket No. ER23-712-000 (Dec. 22, 2022) (“2023 Cost Allocation Update Filing”). In the 2023 Cost Allocation Filing, PJM submitted proposed amendments to PJM Open Access Transmission Tariff (“Tariff”) Schedule 12-Appendix and Schedule 12-Appendix A to provide updated annual cost allocations for Regional Facilities, Necessary Lower Voltage Facilities and Lower Voltage Facilities included in the PJM Regional Transmission Expansion Plan (“RTEP”). The proposed revisions also include minor, non-substantive revisions to Tariff, Schedule 12-Appendix and Tariff, Schedule 12-Appendix A.

⁴ 18 C.F.R. § 385.213(a)(2).

of an issue, and/or permit the issues to be narrowed.⁵ This Answer satisfies these standards. Accordingly, PJM respectfully submits that good cause exists to grant this motion for leave to answer.

II. LIMITED ANSWER

Protestors filed the only protest in this docket, repeating arguments that are either substantially similar or identical to arguments they have raised in response to prior RTEP cost allocation update filings.⁶ In short, as discussed further below, each of the arguments raised by the Protestors challenge the continued justness and reasonableness of the currently-effective solution-based DFAX methodology.⁷ The Commission has made clear, however, that such arguments are outside the scope of a proceeding addressing PJM's annual cost allocation update

⁵ See, e.g., *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co. and Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,057, at P 93 (2012); *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,285 (2010); *Sw. Power Pool, Inc.*, 131 FERC ¶ 61,252, at P 19 (2010), *reh'g denied*, 137 FERC ¶ 61,075 (2011) (accepting answers that “provided information that assisted us in our decision-making process”); *Duke Energy Ky., Inc.*, 122 FERC ¶ 61,182, at P 25 (2008) (accepting answers in proceeding that “provided information that assisted us in our decision-making process”); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 26 (2008); *PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,083, at P 23 (2007) (answer to protests permitted when it provides information to assist the Commission in its decision-making process); *Morgan Stanley Capital 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...”).

⁶ See *PJM Interconnection, L.L.C.*, Filing Letter, Docket No. ER22-702-000 (Dec. 21, 2021) (“2022 Cost Allocation Update Filing”); *PJM Interconnection, L.L.C.*, Filing Letter, Docket No. ER21-726-000 (Dec. 21, 2021) (“2021 Cost Allocation Update Filing”). See also *PJM Interconnection, L.L.C.*, Motion to Intervene and Protest of Long Island Power Authority and Neptune Regional Transmission System, LLC, Docket No. ER22-702-000 (Jan. 11, 2022) (“LIPA/Neptune 2022 Protest”); *PJM Interconnection, L.L.C.*, Protest of Long Island Power Authority and Neptune Regional Transmission System, LLC, Docket No. ER21-726-000 (Jan. 13, 2021) (“LIPA/Neptune 2021 Protest”).

⁷ The currently-effective solution-based DFAX methodology was approved by the Commission in 2013, and includes the application of the netting procedure and the *de minimis* rule, as amended by revisions proposed by the PJM Transmission Owners in April 2022 to refine the application of the solution-based DFAX methodology such that the *de minimis* rule is not applied to the “host zone,” *i.e.*, the zone in which the reliability project will be located (the “host zone exclusion rule”). See *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,074, at P 1 (2013) (accepting the solution-based DFAX methodology subject to additional filings); *PPL Elec. Util. Corp.*, 179 FERC ¶ 61,176 (2022) (accepting the host zone exclusion rule, to be effective June 11, 2022, subject to refund and the outcome of paper hearing procedures).

filing, and has therefore rejected such arguments.⁸

Moreover, as the Protestors acknowledge,⁹ there are already pending proceedings in which the Commission will determine whether the currently-effective solution-based DFAX methodology remains just and reasonable.¹⁰ In fact, as PJM stated in the 2023 Cost Allocation Update Filing, any proceeding implemented by the Commission in response to the 2022 Remand Order (“Remand Proceeding”) or the consolidated proceeding addressing the “no host zone exclusion” filing and the LIPA/Neptune Complaint (“Consolidated Proceeding”) may have an impact on the cost allocations set forth in the 2023 Cost Allocation Update Filing, depending on the outcome of those proceedings.¹¹

Regardless, the issues the Commission will consider in those proceedings are not the subject of this proceeding, and should not be litigated twice. Nor should this annually-filed cost allocation update be suspended while the Commission considers the larger issues in the Remand Proceeding and the Consolidated Proceeding. The Commission should therefore accept the Tariff revisions proposed in the 2023 Cost Allocation Update Filing to be effective January 1, 2023 so

⁸ See *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,113, at PP 27–28 (2022) (“Order Accepting 2022 Cost Allocation Update Filing”), *reh’g denied*, *PJM Interconnection, L.L.C.*, 179 FERC ¶ 62,043 (2022); 175 FERC ¶ 61,152, at P 47 (2021) (“Order Accepting 2021 Cost Allocation Update Filing”), *reh’g denied*, 176 FERC ¶ 62,045 (2021). See also Sections II.A and II.B, *infra*.

⁹ See Protest at 2, 4–5, 6–7.

¹⁰ See *Consol. Edison Co. of N.Y., Inc. v. FERC*, 45 F.4th 265 (D.C. Cir. 2022) (“2022 Remand Order”) (remanding to the Commission issues including the application of the *de minimis* threshold); *Neptune Reg’l Transmission Sys., LLC v. PJM Interconnection, L.L.C.*, 175 FERC ¶ 61,247 (2021) (“Order on LIPA/Neptune Complaint”) (setting for paper hearing a complaint filed by LIPA and Neptune (“LIPA/Neptune Complaint”), which alleged that the use of netting and *de minimis* rule provisions of the Tariff materially distort the assignment of cost responsibility resulting from application of solution-based DFAX method resulting in cost responsibility assignments that are not roughly commensurate with derived benefits); *PPL Electric Utilities Corp., et al.*, 179 FERC ¶ 61,176 (2022) (accepting the filing to be effective June 11, 2022, setting for paper hearing the host zone exclusion rule, and consolidating the matter with the proceeding addressing the LIPA/Neptune Complaint).

¹¹ See 2023 Cost Allocation Update Filing at 12–14.

that there is clarity as to the cost responsibility assignments to be applied.¹²

For these reasons, PJM limits its response to Protestors' objection to PJM's annual updated allocation of cost responsibility assignments.

A. The Commission's Review of PJM's Annual Cost Allocation Update Filings is Limited to Whether PJM Appropriately Implemented its Tariff

Consistent with arguments they have made in prior protests,¹³ Protestors again argue that the revisions to Tariff, Schedule 12-Appendices set forth in the 2023 Cost Allocation Update Filing constitute a new rate under Federal Power Act ("FPA") section 205, and, consequently, PJM's filing is deficient because PJM has failed to demonstrate that the cost allocation assignments are just and reasonable, or that the allocations are roughly commensurate with benefits.¹⁴ Protestors also repeat their prior argument that the Commission's role under FPA section 205 is not merely to ensure that FPA section 205 filings are compliant with Tariff procedures. Rather, Protestors argue that the Commission must substantively review the rate proposal and that PJM's lack of sufficient information hampers the Commission's and interested parties' review of the rate.¹⁵ The Commission has consistently and explicitly rejected these arguments.

For instance, in response to Protestors' identical challenge to the 2022 Cost Allocation Update Filing, the Commission explained its role in reviewing PJM's annual RTEP cost allocation update filings as follows:

The solution-based DFAX method is formulaic and does not contemplate modification on a project-by-project basis; rather, it is a comprehensive formula that determines cost allocations based on a computer model of the PJM transmission system. The Tariff describes the solution-based DFAX method

¹² The Commission could accept the Tariff revisions set forth in the 2023 Cost Allocation Filing subject to refund and the outcome of the Remand Proceeding and the Consolidated Proceeding, consistent with its acceptance of prior cost allocation update filings. *See, e.g.*, Order Accepting 2022 Cost Allocation Update Filing at P 1.

¹³ *See supra*, n.6.

¹⁴ *See* Protest at 4–7.

¹⁵ *Id.*

process in detail. As the Commission has previously found, the “complexity” of the application of the solution-based DFAX method does not preclude PJM from relying on the solution-based DFAX method as laid out in its Tariff. *We, therefore, review PJM’s RTEP update filings to determine whether PJM appropriately followed its Tariff provisions in allocating costs according to this formula and to permit challenges to the inputs to this formula, not whether the formula itself is unjust and unreasonable.* ...¹⁶

Similarly, in its order accepting the 2021 Cost Allocation Update Filing, the Commission explained that its “review of [that] filing is *limited to whether PJM has correctly applied Schedule 12 of the PJM Tariff.*”¹⁷

Although LIPA and Neptune raise several arguments attempting to demonstrate that the solution-based DFAX methodology is unjust and unreasonable,¹⁸ they have neither made any arguments, nor introduced any evidence purporting to show that PJM failed to correctly implement the currently-effective filed rate. Accordingly, based on the very clear precedent described above, PJM respectfully requests that the Commission reject the Protestors’ arguments that the 2023 Cost Allocation Update Filing is deficient.

B. The Allocations in the 2023 Cost Allocation Update Filing are Just and Reasonable as Filed and Fully Comply with the Filed Rate Set forth in Tariff, Schedule 12. Protestors’ Arguments are Outside the Scope of this Proceeding

The sole issue in this docket is whether PJM determined the cost responsibility assignments set forth in the 2023 Cost Allocation Update Filing are consistent with the Commission-accepted methodologies set forth in the Tariff, Schedule 12, not whether those methodologies are just and reasonable. Protestors nonetheless make arguments challenging whether the currently-effective

¹⁶ Order Accepting 2022 Cost Allocation Update Filing at P 28 (emphasis added, footnotes omitted).

¹⁷ Order Accepting 2021 Cost Allocation Update Filing at P 47 (emphasis added), citing *PJM Interconnection, L.L.C.*, 165 FERC ¶ 61,078, at PP 22, 24 (2018).

¹⁸ See *infra* Section II.B.

Tariff methodologies are just and reasonable. The Commission should reject these arguments as outside the scope of this proceeding.

For example, Protestors argue that the cost responsibility assignments set forth in the 2023 Cost Allocation Update Filing are unjust and unreasonable because PJM used the netting procedure and the *de minimis* threshold when performing the solution-based DFAX calculations.¹⁹ In support, Protestors cite to the 2022 Remand Order²⁰ to argue that the U.S. Court of Appeals for the D.C. Circuit’s (“Court”) findings regarding the *de minimis* rule mean that “PJM has filed proposed 2023 cost allocations determined by applying a methodology that is *per se* not just and reasonable.”²¹ Protestors also cite to the LIPA/Neptune Complaint, which they maintain includes evidence demonstrating that the netting procedure and the *de minimis* rule creates “anomalous, unjust and unreasonable cost allocation assignments.”²²

Protestors fail to acknowledge, however, that the Commission has not yet issued an order in response to the 2022 Remand Order, nor has it issued a substantive order in the Consolidated Proceeding. As such, the solution-based DFAX methodology in the currently-effective Tariff includes the application of the netting procedure and the *de minimis* rule, including the host zone exclusion rule.²³ Until such time that the Commission makes effective revisions to the Tariff’s cost allocation methodologies, PJM’s obligation is to apply the currently-effective, Commission-accepted methodologies set forth in Tariff, Schedule 12, which PJM has done in this instance.

¹⁹ See Protest at 3-4.

²⁰ See *supra* n.10.

²¹ Protest at 4.

²² *Id.*

²³ *Id.* at 1.

PJM therefore appropriately calculated cost responsibility assignments based on the solution-based DFAX methodology that applied the netting procedure and the *de minimis* rule.

Moreover, as discussed above, the Commission has previously rejected protests as beyond the scope of the proceeding where protestors challenged PJM's application of netting and the *de minimis* rule as part of the solution-based DFAX methodology, as opposed to arguing that PJM improperly applied its Commission-accepted cost allocation methodology.²⁴ Additionally, the Commission previously found that the ongoing proceeding addressing the LIPA/Neptune Complaint, challenging the justness and reasonableness of certain components of the solution-based DFAX methodology, is the appropriate proceeding in which to address the same challenges to the solution-based DFAX that the Protestors again improperly raise in this proceeding.²⁵

PJM therefore respectfully requests that the Commission again reject Protestors' challenges to the netting procedure and *de minimis* rule as outside of the scope of this proceeding addressing the 2023 Cost Allocation Update Filing, and confirm that the appropriate proceedings to address such challenges are the Consolidated Proceeding and the Remand Proceeding.

C. Changes to Cost Assignments are Expected Due to Year-to-Year Modifications to the PJM Transmission System

Protestors argue that the cost assignments proposed in the 2023 Cost Allocation Update Filing are anomalous, and that PJM fails to explain the reasons for the volatility in the cost allocations.²⁶ In support of this argument, Protestors list 55 RTEP baseline upgrades whose cost

²⁴ See, e.g., Order Accepting 2021 Cost Allocation Update Filing at P 47; Order Accepting 2022 Cost Allocation Update Filing at P 28.

²⁵ See, e.g., Order Accepting 2021 Cost Allocation Update Filing at P 47.

²⁶ See Protest at 7–9.

allocations they maintain have shifted by at least 20% to another Zone as compared to the allocations in 2022.²⁷

As PJM has explained in prior filings,²⁸ changes to cost assignments calculated pursuant to the solution-based DFAX methodology “are an expected outcome of planning model changes.”²⁹ As explained in PJM’s March 2021 Deficiency Response, PJM has identified two primary categories of drivers for changes to cost responsibility assignments using solution-based DFAX: (i) changes to the PJM transmission system and (ii) regulatory changes. One reason for the difference in cost assignments under the 2023 Annual Cost Allocation Update as compared to the 2022 Annual Cost Allocation Update are the year-to-year modifications to the PJM transmission system that affect flows on the PJM network. As expected, such system modifications have an impact on cost allocations derived pursuant to the solution-based DFAX methodology.

For example, over time, transmission enhancement or expansion additions, as well as numerous other changes to the system, such as generation additions, generation retirements, changes in loads, both in PJM and in neighboring systems, and other transmission additions and modifications to the configuration of existing transmission facilities or even the new facility itself affect the flows on the PJM transmission system. PJM reflects the majority of such system modifications in the annual RTEP starting base case for the upcoming RTEP year and adds new PJM Board of Managers-approved transmission enhancements and expansions to the model

²⁷ See *Id.* at 9–14.

²⁸ *PJM Interconnection, L.L.C.*, PJM’s Motion for Leave to Answer and Answer, Docket No. ER22-702-000, at 6 (Jan. 26, 2022) (“2022 Motion for Leave to Answer”); *PJM Interconnection, L.L.C.*, Response to February 18, 2021 Deficiency Letter, Docket No. ER21-726-001, at 13–16 (Mar. 22, 2021) (“March 2021 Deficiency Response”).

²⁹ 2022 Motion for Leave to Answer at 6; *PJM Interconnection, L.L.C.*, Response to February 18, 2021 Deficiency Letter, Docket No. ER21-726-001, at 13–16 (Mar. 22, 2021).

during the course of the RTEP year. The collective impact of these model updates results in cost allocation changes over time, which is precisely the intent of the solution-based DFAX methodology.³⁰ The longer the time lapse between the initial cost allocation and the update filing,³¹ the more variation there may be to the initial allocation, which could lead to larger cost allocation deviations.

Additionally, as discussed above and in the 2022 Annual Cost Allocation Update, since the “no host zone exclusion” revision to the *de minimis* exception became effective on June 11, 2022, PJM applied the newly-accepted *de minimis* exception to the host zones in applying the solution-based DFAX methodology to calculate the cost responsibility assignments set forth in the filing. This regulatory change had an impact on some of the cost responsibility assignments under the 2023 Annual Cost Allocation Update as compared to the 2022 Annual Cost Allocation Update.

The fact is that cost allocations change. It is an intended feature of the solution-based DFAX methodology to ensure that the cost allocation tracks the actual beneficiaries throughout the lifetime of the assets as the system evolves over time. The Protest is a challenge to such methodology, which, again, is inappropriate in this proceeding and more appropriately addressed

³⁰ See, e.g., *PJM Transmission Owners*, PJM Open Access Transmission Tariff Revisions to Modify Cost Allocation for PJM Required Transmission Enhancements, Exhibit No. PTO-1, Testimony of Steven R. Herling, Docket No. ER13-90-000, at 12:6–13 (Oct. 11, 2012) (explaining that the solution-based DFAX methodology “can be repeated periodically to reflect changes in the relative degree to which the facility is used by transmission zone loads and merchant transmission facilities” and that it “can be employed to capture changes in the distribution of benefits of the new transmission facility”); *PJM Interconnection, L.L.C.*, Order No. 1000 Compliance Filing, Docket No. ER13-198-000, at 80 (Oct. 25, 2012) (explaining that a benefit of the solution-based DFAX methodology is that it can be updated annually to “capture changes in flows in a way which is administratively feasible to implement.”); *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 427 (2013) (accepting the proposal to base cost allocation on the solution-based DFAX methodology and recognizing that “it may be conducted iteratively to account for changes in system topology.”).

³¹ See Tariff, Schedule 12 section (b)(H)(2) (while existing facilities are updated annually under solution-based DFAX, new transmission facilities are not updated until “the calendar in which a Required Transmission Enhancement is scheduled to enter service”).

in the Consolidated Proceeding and the Remand Proceeding.

III. CONCLUSION

For the reasons set forth above, PJM respectfully requests that the Commission: (i) grant this motion for leave to answer, (ii) reject the Protest, and (iii) accept the Tariff revisions proposed in the 2023 Cost Allocation Update Filing, effective January 1, 2023.

Respectfully submitted,

/s/ Jessica M. Lynch

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Dated: January 27, 2023

CERTIFICATE OF SERVICE

I hereby 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 27th day of January, 2023.

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