



Commission provide a clearer signal on rehearing as to how it will take into account recently-approved reforms such as PJM’s IPRTF Tariff,<sup>4</sup> rather than creating uncertainty and only addressing this critical point after a months-long compliance process.

PJM has begun the Transition Period for its IPRTF Tariff, which received overwhelming stakeholder support, and has been working and continues to work to clear the backlog of interconnection requests under strict deadlines. However, unless the Commission provides more clarity as to how it will review recently approved reform processes in the Order No. 2023 compliance process (i.e., significantly more clarity than is provided by the generalized statements in the Final Rule about not disturbing ongoing transition processes), the Commission will be responsible for creating uncertainty at the very time certainty as to the rules for expeditious processing of interconnection requests is so critical. In short, now, when PJM is “mid-flight” with its new interconnection process, is not the time to require PJM to substantially re-tool its interconnection processes or to cause substantial uncertainty as to how to comply with the Final Rule that will last for months and distract from the vital effort to process backlogged interconnection requests as expeditiously and efficiently as possible.

Because the timing and clarity of the Commission’s pronouncements on this subject are so critical, the Commission should provide the necessary clarity before requiring PJM to commence a months-long and resource-intensive, line-by-line compliance process. PJM therefore seeks clarification that PJM will not be required to implement the Final Rule in a

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<sup>4</sup> See *PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,162 (2022) (“November 2022 Order”), *order on reh’g*, 184 FERC ¶ 61,006 (2023). The Tariff reforms were the result of the Interconnection Process Reform Task Force (“IPRTF”) and other stakeholder efforts, and are referred to herein as the “IPRTF Tariff.” The IPRTF Tariff was submitted to the Commission on June 14, 2022. *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”).

manner that would modify or undermine PJM's interconnection procedures and agreements recently accepted by the Commission but rather that the Commission will review PJM's request for an independent entity variation from the Final Rule holistically, considering PJM's reformed interconnection process as a whole. In other words, the Commission should clarify that it will review PJM's independent entity variation request by examining whether the *entire package of reforms taken as a whole* is consistent with or superior to the goals and requirements of the Final Rule rather than forcing PJM and its stakeholders to engage in an item-by-item justification of every variation from the minutiae of the Final Rule's requirements. By the same token, the Commission also should clarify it will ensure that its requirements as to the timing of compliance with the Final Rule do not impede or undercut the interconnection process reforms and transition periods the Commission has recently approved and that are presently underway, as is the case with PJM's IPRTF Tariff.

PJM recognizes that this request may not be consistent with more traditional compliance processes that require many months if not years to revise tariffs, such as the lengthy Order No. 1000 compliance process. But if Order No. 2023 is to succeed, by meeting its stated goal of ensuring efficient and effective interconnection processes, the Commission must provide the requested clarity on rehearing or risk recently reformed interconnection processes such as PJM's foundering at an early stage.

If the Commission does not provide such clarification, PJM requests rehearing of the Final Rule because the Commission should have established a presumption that the IPRTF Tariff (and other ongoing, recently approved interconnection process reform packages) complies with the Final Rule and because it would be arbitrary, capricious, and inconsistent with reasoned decision making to require modifications to PJM's

comprehensive IPRTF Tariff, which represents years of combined PJM and stakeholder efforts to revamp PJM’s interconnection processes and agreements to best meet the needs of PJM and its stakeholders, based on a generic rulemaking.

**B. Additional Grounds for Rehearing**

PJM also seeks clarification or rehearing of other aspects of Order No. 2023, including:

- the Commission’s decision to eliminate the Reasonable Efforts standard and impose a strict-liability penalty regime for study delays that is ambiguous, poorly thought out, unlawful as configured in the Final Rule, and more likely to spawn time-consuming litigation than encourage faster studies;<sup>5</sup>
- the Final Rule’s unwarranted expansion of Surplus Interconnection Service to an early stage at which no base service exists to provide any “surplus” service;
- The Final Rule’s requirement that transmission providers study storage projects based on operating assumptions provided by the storage project developers despite there being no way for PJM to monitor these projects’ real time operations or enforce the operating restrictions;<sup>6</sup>
- the requirement that grid-enhancing technologies (“GETs”) be evaluated with no limits on how many such technologies interconnection customers may present for study and when they can present them, which undermines

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<sup>5</sup> Order No. 2023 at PP 965, 973.

<sup>6</sup> *Id.* at PP 1436, 1509.

the orderly process required to study interconnection requests quickly and efficiently, as well as the requirement that PJM undertake an unnecessary burden to report separately on the evaluation of GETs at the conclusion of each cluster study;<sup>7</sup>

- the Final Rule’s overly prescriptive approach to a heatmap that will provide information to interconnection customers and its requirement that load pay for this tool rather than permitting other arrangements that would charge the costs to the interconnection customers that benefit from it;<sup>8</sup> and
- the Final Rule’s requirements that will allow interconnection customers to move their point of interconnection and add new generating facilities to their initial interconnection request<sup>9</sup> because they impose additional study requirements and allow projects to proceed that clearly are not ready to the extent they are unsure what facilities they seek to interconnect at the time of their application and where they would interconnect them. The requirements, therefore, are inconsistent with the Final Rule’s stated goals of facilitating a prompt study process that allows ready projects to move forward and would undermine the orderly process necessary to increase the speed and efficiency of the study process.

In light of the many requests for clarification and/or rehearing presented herein by PJM and the many similar requests PJM anticipates will be made by other parties, PJM respectfully requests that the Commission postpone the compliance deadline for the Final

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<sup>7</sup> *Id.* at P 1578.

<sup>8</sup> *Id.* at P 162.

<sup>9</sup> *Id.* at PP 280-81.

Rule from ninety days after the rule’s publication in the *Federal Register* to ninety days after the Commission issues an order on the requests for rehearing and clarification of the Final Rule filed herein and by other parties. PJM has joined with Midcontinent Independent System Operator, Inc. (“MISO”) and Southwest Power Pool, Inc. (“SPP”) on a motion to extend the compliance deadline to effectuate this request.

## II. BACKGROUND

### A. The Intertwined Timelines of the Docket No. RM22-14-000 Notice of Proposed Rulemaking, Order No. 2023, and PJM’s IPRTF Tariff

The Commission issued its Notice of Proposed Rulemaking in Docket No. RM22-14-000 on June 16, 2022,<sup>10</sup> two days after PJM made its June 14 Filing to reform its interconnection process and agreements. PJM filed both initial and reply comments in Docket No. RM22-14-000<sup>11</sup> supporting the Commission’s efforts to revise its *pro forma* Large Generator Interconnection Procedures (“LGIP”) and *pro forma* Large Generator Interconnection Agreement (“LGIA”). PJM’s comments also demonstrated that PJM’s proposed IPRTF Tariff, which the Commission accepted without modification on November 29, 2022, after PJM filed its initial comments and before PJM filed its reply comments in Docket No. RM22-14-000, substantially satisfies the NOPR’s objectives and requirements but also is tailored to the PJM Region.<sup>12</sup> The customization of the IPRTF Tariff to the PJM Region was effectuated through a lengthy stakeholder proceeding and

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<sup>10</sup> *Improvements to Generator Interconnection Procedures and Agreements*, 179 FERC ¶ 61,194 (2022) (“NOPR”).

<sup>11</sup> See Initial Comments of PJM Interconnection, L.L.C., Docket No. RM22-14-000, at 1-2, 4 (Oct. 13, 2022) (“PJM Initial Comments”); Reply Comments of PJM Interconnection, L.L.C., Docket No. RM22-14-000, at 1 (Dec. 14, 2022).

<sup>12</sup> See PJM Initial Comments at 1-2, 4, 9-11, 15-16.

reflected in the overwhelming support the final package that was filed received from stakeholders.<sup>13</sup>

Eight months after accepting PJM’s IPRTF Tariff and less than three weeks after PJM achieved its Transition Date and began to move from its old interconnection procedures and agreements to its new IPRTF Tariff, the Commission issued the Final Rule. The Final Rule rests on the Commission’s determination that its existing *pro forma* generator interconnection procedures and agreements are insufficient to ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner.<sup>14</sup> The Commission went on to state that, without reform, the *pro forma* interconnection procedures will continue to cause interconnection queue backlogs, longer development timelines, and increased uncertainty regarding the cost and timing of interconnecting to the transmission system.<sup>15</sup> The Commission concludes that these conditions, in turn, will inhibit the development of new generation and stifle competition in the wholesale electric markets, resulting in rates, terms, and conditions that are unjust, unreasonable, and unduly discriminatory or preferential.<sup>16</sup> The Commission pointed to significant delays in all areas of the country as justification for the

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<sup>13</sup> This process included 20 IPRTF meetings, which occupied approximately 99 hours, represented significant stakeholder engagement, with 290 PJM Member Companies and 545 total companies participating in the December 2021 polling on the New Rules solution package. The number of Members voting on the proposed interconnection reform package was also extremely high, and the votes themselves evidenced tremendous support for the reform package, with the proposed reforms endorsed on April 27, 2022, by a sector weighted vote of 4.368 out of a total of 5.00 by PJM’s Markets and Reliability Committee and a sector weighted vote of 4.518 out of a total of 5.00 by PJM’s Members Committee. *See* June 14 Filing at 26-27; Affidavit of Jason P. Connell (Attachment C) ¶¶ 17-18, 21-23 (“Connell Aff.”).

<sup>14</sup> Order No. 2023 at P 37.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

changes required by Order No. 2023, and stated that factors including the prevailing serial interconnection study processes contribute to these delays.<sup>17</sup>

As just recounted, at the time the Commission issued the NOPR and began building the record underpinning Order No. 2023, PJM already had proposed to move from a serial interconnection study process to a first-ready, first-served clustered interconnection study process and to make other changes consistent with the NOPR and the Final Rule, such as requiring interconnection customers to put funds at risk to remain in the interconnection process and imposing more stringent site control requirements, in order to deter speculative projects from entering and loitering in the queue. PJM marked the Transition Date, the beginning of the transition to the new interconnection process, on July 10, 2023, 18 days before the Commission issued the Final Rule.<sup>18</sup> During the period between Commission acceptance of the June 14 Filing and the Transition Date, PJM personnel, consultants and counsel have been engaged in preparing the new systems, documentation, and processes needed for the IPRTF Tariff and developing and/or implementing the necessary software packages and platforms. These parties have been working very hard to clear the interconnection request backlog from its old process.<sup>19</sup>

The Final Rule expressly recognizes the need to protect ongoing transmission provider reform efforts, with the Commission stating “w]e recognize that many transmission providers have adopted or are in the process of adopting similar reforms to those adopted in this final rule. . . . [and] do not intend to disrupt these ongoing transition

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<sup>17</sup> *Id.* at PP 39, 44-45.

<sup>18</sup> See *PJM Interconnection, L.L.C.*, Notification of Occurrence of Transition Date, Docket Nos. ER22-2110-000, -001 (July 11, 2023).

<sup>19</sup> There are currently 40 gigawatts of generation that have final agreements but are not yet interconnected to the PJM transmission system. This is a measure of the amount of generation that has cleared the PJM interconnection process, other than construction milestones, and has rights to the system.



processes or stifle further innovation.”<sup>20</sup> The Commission also recognized “that some transmission providers have existing cluster studies in progress and others have Commission-approved transition plans in progress. We emphasize that the provisions of this final rule are not intended to interfere with the timely completion of those in-progress cluster studies and transition processes.”<sup>21</sup>

The quoted language speaks to “in-progress” cluster studies and “transition” processes, but the Commission expressly rejected any presumption of compliance for recently-approved interconnection process reforms such as PJM’s IPRTF Tariff.<sup>22</sup> While PJM is pleased that the Final Rule contains some generalized language concerning the Commission’s lack of intent to infringe upon transition processes and periods, such as the Transition Period PJM commenced on July 10, 2023, PJM is concerned about the Final Rule’s impact on the new, reformed interconnection process to which PJM is transitioning. This concern is heightened by the fact that interconnection customers are making decisions *now* based on the current transition to the anticipated future cluster process. However, the Final Rule provides no additional insight as to how the IPRTF Tariff will be handled, such as a presumption of reasonableness of recently-approved interconnection reforms, leaving it all up in the air for what could be a protracted, resource intensive compliance process.<sup>23</sup>

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<sup>20</sup> Order No. 2023 at P 1765; *see also id.*, concur op. (Commissioner Christie) at PP 24-25 (stating that the Final Rule recognizes the need to provide flexibility for transmission providers to show their reforms comply with the Order No. 2023, and that “[s]ome RTOs, such as PJM, have already launched extensive queue reforms; others, such as CAISO, are hard at work on developing queue reforms”).

<sup>21</sup> *Id.* at P 861.

<sup>22</sup> *Id.* at P 1765 (Commission rejecting requests that it “presume that any transmission provider’s tariff meets the requirements of this final rule.”).

<sup>23</sup> PJM’s Order No. 1000 compliance process went on for 14 months before its initial compliance filing was submitted, and involved five filings based on extensive discussions and painstaking reviews of PJM’s proposed tariff revisions to determine whether they met Order No. 1000’s requirements. The process was also particularly contentious as to certain issues. Here, there simply is not the luxury of time to engage in

The Final Rule creates uncertainty for PJM at the front end of PJM's efforts to expeditiously address the interconnection request backlog, casting doubt on the time, resources, and money PJM and its stakeholders have invested to date in developing and preparing to implement the IPRTF Tariff and whether they should continue that effort and investment. Rather than creating this uncertainty, the Commission should clarify that it will review PJM's request for an independent entity variation from the Final Rule holistically, considering the IPRTF Tariff as a balanced, single package, and thereby allow the IPRTF Tariff to remain in place as filed and accepted, without substantial modification. This clarification is necessary to provide a meaningful opportunity for the IPRTF Tariff, which represents years of combined PJM and stakeholder efforts to revamp PJM's interconnection processes and agreements to best meet the needs of PJM and its stakeholders, to address the needs the Commission spells out in Order No. 2023 in a manner that is appropriate for the PJM Region.

### **III. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS**

Consistent with Rules 203(a)(7) and 713(c) of the Commission's regulations, 18 C.F.R. §§ 385.203(a)(7), 385.713(c), PJM provides the following Statement of Issues and Specification of Errors, including representative Commission and court precedent:

1. The Commission should clarify that the Final Rule is not intended to and does not require PJM to modify its comprehensive IPRTF Tariff package in piecemeal fashion, removing some provisions of the extensively negotiated package and adding new elements without regard to the balance struck in the development of the IPRTF Tariff. To the extent the Commission declines to so clarify, PJM seeks rehearing of the Final Rule as it does not reflect reasoned decision making to refuse a presumption that recently-approved interconnection reforms are just and reasonable and the decision is not based on substantial evidence concerning the IPRTF Tariff, fails to consider important factors, and is based on stale information. *Motor Vehicle Manufacturers Ass'n v. FERC*,

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the type of process that was used for Order No. 1000 compliance, given the interconnection request backlog PJM is trying to clear and the fact that the IPRTF Tariff transition is already underway.

463 U.S. 29, 43, 56 (1983) (“*Motor Vehicle Manufacturers*”); *BP Energy Co. v. FERC*, 828 F.3d 959, 965 (D.C. Cir. 2016) (“*BP*”); *N. Carolina v. FERC*, 584 F.2d 1003, 1012 (D.C. Cir. 1978) (“*North Carolina*”). Such a position would be inconsistent with Commission policy allowing regional transmission organizations (“RTOs”) to depart from a generic rulemaking’s requirements when justified. See *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043, at P 556 (2018), *order on reh’g & clarification*, Order No. 845-A, 166 FERC ¶ 61,137, *order on reh’g & clarification*, Order No. 845-B, 168 FERC ¶ 61,092 (2019); *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103, at P 826 (2003), *order on reh’g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh’g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh’g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff’d sub nom. Nat’l Ass’n of Regul. Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

2. The Commission must grant rehearing on the elimination of the Reasonable Efforts standard and imposition of penalties for delays in interconnection studies, as the Commission provides no basis in the record to support penalties as an effective solution and errs in failing to meaningfully respond to, and account for, the multiple shortcomings of a strict liability penalty regime presented by PJM and others. These shortcomings include that a penalty regime will be difficult to implement and will not rectify the problems the Commission means to correct, will assign penalties and costs to parties regardless of fault, will cause more delays, and will place an unreasonable burden on transmission providers. To the extent the Commission labels these charges “penalties” and has established them with no linkage to damages, no proportionality to potential harm, and would direct the funds to flow to interconnection customers rather than to the Treasury of the United States (“Treasury”), the charges violate FPA sections 315 and 316A, 16 U.S.C. §§ 825n and 825o-1, and are inconsistent with Commission policy and judicial precedent, and thus with reasonable decision making<sup>24</sup> Moreover, the Commission’s proposed penalty structure applies strict liability without regard to the extent to which interconnection customers may have contributed to the study delays thus unreasonably shifting cost responsibility for delays caused by interconnection customers to transmission providers. In addition, the Commission should clarify that, if adopted, the penalties listed in the Final Rule are per study, per business day,

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<sup>24</sup> *Interstate Natural Gas Ass’n of America v. FERC*, 285 F.3d 18, 37 (D.C. Cir. 2002) (indicating that “proportionality between the identified problem and the remedy is the key”); *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 51 (2008) (acknowledging that the FPA and Natural Gas Act (“NGA”) requiring the Commission to take in account the severity of the violation and any remedial efforts taken before assessing penalties). FPA section 315(b) states the referenced penalties “shall be payable to the Treasury of the United States.” FPA section 316A indicates that the Commission must provide “notice and opportunity for a public hearing” before assessing any penalties, and that “[i]n determining the amount of a proposed penalty, the Commission shall take into consideration the seriousness of the violation and the efforts of such person to remedy the violation in a timely manner.”). Section 22 of the NGA, 15 U.S.C. § 717t-1, imposes similar requirements.

rather than per interconnection customer in the cluster, per business day, as the latter would result in extremely large penalty amounts that would exacerbate all the other problems with penalties discussed herein, further showing that Order No. 2023 is not the result of reasoned decision making in that regard. *Motor Vehicle Manufacturers*, 463 U.S. at 41-43; *New Eng. Power Generators Ass'n v. FERC*, 881 F.3d 202, 210 (D.C. Cir. 2018) (“*NEPGA*”); *Ameren Servs. Co. v. FERC*, 880 F.3d 571, 581 (D.C. Cir. 2018) (“*Ameren Services*”); *PSEG Energy Res. & Trade LLC v. FERC*, 665 F.3d 203, 208, 210 (D.C. Cir. 2011) (“*PSEG*”); *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198-99 (D.C. Cir. 2005) (“*PPL Wallingford*”); *Edison Mission Energy, Inc. v. FERC*, 394 F.3d 964, 969 (D.C. Cir. 2005); *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1120 (D.C. Cir. 2002) (“*PG&E*”).

3. PJM seeks rehearing of the Final Rule’s requirement for transmission providers to expand the availability of Surplus Interconnection Service to the point in time at which the initial interconnection customer has an executed LGIA or has requested filing of an unexecuted LGIA because it is impractical and there is little benefit provided by expanding a service no one in PJM is taking. Moreover, approximately half of the interconnection requests that have executed agreements are withdrawn or terminated prior to commercial operation, further showing that this service is impractical and will require additional studies of nonexistent projects. The Commission has no evidence that the expansion of Surplus Interconnection Service is feasible or necessary, and thus is arbitrary and capricious in adding to the study burden on transmission providers for little benefit. *Motor Vehicle Manufacturers*, 463 U.S. at 43; *Emera Me. v. FERC*, 854 F.3d 9, 26-27 (D.C. Cir. 2017) (“*Emera*”); *PG&E*, 373 F.3d at 1319.
4. PJM seeks rehearing of the Final Rule’s requirement that transmission providers study the interconnection of energy storage projects using customer-supplied operating parameters. The Commission failed to respond meaningfully to the concerns raised that use of customer-provided operating assumptions in interconnection studies is not consistent with how planning studies are performed, will add additional administrative burdens for transmission providers, and may jeopardize reliability and shift costs to load and therefore this aspect of the Final Rule does not represent reasoned decision making based on substantial evidence. *Motor Vehicle Manufacturers*, 463 U.S. at 43; *Emera*, 854 F.3d at 26-27; *PG&E*, 373 F.3d at 1319.
5. PJM seeks rehearing of the Final Rule’s requirement that transmission providers consider the proposed addition of a generating facility at the same point of interconnection as a generating facility already in the cluster if the addition does not change the interconnection service level requested by the first project. Because this requirement imposes additional study requirements and allows projects to proceed even though they clearly are not ready to do so if they are unsure what facilities they seek to interconnect at the time of their application, it is inconsistent with the Final Rule’s stated goals of facilitating a

prompt study process that allows ready projects to move forward, making this aspect of the Final Rule internally inconsistent and incoherent and, therefore, arbitrary and capricious. *Motor Vehicle Manufacturers*, 463 U.S. at 41, 43; *Emera*, 854 F.3d at 27; *PSEG*, 665 F.3d at 208, 210; *PPL Wallingford*, 419 F.3d at 1198, 1200; *see Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028, 1057 (D.C. Cir. 2022) (“*Constellation*”); *ANR Storage Co. v. FERC*, 904 F.3d 1020, 1024 (D.C. Cir. 2018) (“*ANR*”).

6. Although PJM provides its heatmap, Queue Scope, to the public free of charge, PJM seeks rehearing of the Final Rule’s specification that transmission providers must always charge the costs of maintaining and posting heatmaps to transmission service customers as opposed to considering other structures such as fees for prospective developers not yet in the queue to access the heat map. This restriction is contrary to basic cost causation principles because it allows the parties that benefit from heatmaps to escape their costs, and instead imposes the costs on others, and would establish a bad precedent. *El Paso Electric Co. v. FERC*, No. 18-60565, slip op. at 8-12, 14 (5th Cir. Aug. 2, 2023) (“*EPE*”); *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh’g & clarification*, Order No. 1000-A, 139 FERC ¶ 61,132, at P 578, *order on reh’g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014). Retaining this restriction also would be a departure from long-standing policy on cost allocation, further showing its infirmity. *See Motor Vehicles Manufacturers*, 463 U.S. at 57; *Sw. Airlines Co. v. FERC*, 926 F.3d 851, 858 (D.C. Cir. 2019) (“*Southwest*”); *Panhandle E. Pipe Line Co. v. FERC*, 196 F.3d 1273, 1275 (D.C. Cir. 1999) (“*Panhandle*”).
7. The Commission also errs in requiring transmission providers to update the heatmap within 30 days of the conclusion of each cluster study as this requirement is unnecessary, provides little benefit, and distracts from completion of cluster studies, which is contrary to the stated goals of Order No. 2023. The Final Rule’s many additions of work that provides little benefit but burdens transmission providers is contrary to Order No. 2023’s stated goal of facilitating timely interconnection, shows Order No. 2023 is internally inconsistent, and provides further confirmation of Order No. 2023’s lack of reasoned decision making. *Constellation*, 45 F.4th at 1057; *ANR*, 904 F.3d at 1024.
8. PJM requests clarification that the Commission did not intend for the Final Rule to require transmission providers to evaluate whether a change in a project’s point of interconnection is a material modification. To the extent the Commission does not so clarify, PJM requests rehearing of this aspect of Order No. 2023. Requiring transmission providers to engage in material modification analyses of point of interconnection changes would be the opposite of reasoned decision making because, as PJM explained in its NOPR comments, any point of interconnection change is a material modification and an analysis is not

needed. *Motor Vehicle Manufacturers*, 463 U.S. at 41, 43; *Emera*, 854 F.3d at 27; *PSEG*, 665 F.3d at 208, 210; *PPL Wallingford*, 419 F.3d at 1198, 1200; *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001) (“CAPP”).

9. PJM seeks rehearing of the requirement that transmission providers evaluate GETs at interconnection customers’ request because the Final Rule places no bounds on how many such technologies interconnection customers may present for study and when they can present them, undermining the orderly cluster study process with additional burdensome requirements. PJM also seeks rehearing of the requirement that a transmission provider include in each cluster study report an explanation of its analysis of an enumerated list of GETs and how the transmission provider decided whether or not to use these GETs. Such an addition to the cluster study report does nothing more than increase the administrative burden on a transmission provider and increase the time needed to perform and report on interconnection studies. For PJM in particular, this requirement is duplicative as all the enumerated GETs already are studied in the normal course of PJM interconnection studies, making the required report of little value. Adding additional studies and reports to an already complex interconnection study process, when the Final Rule’s stated goal is to increase the speed of interconnection processes, makes the Final Rule internally inconsistent and shows it lacks reasoned decision making. *See Constellation*, 45 F.4th at 1057; *ANR*, 904 F.3d at 1024.

#### IV. REQUESTS FOR CLARIFICATION AND REHEARING

**A. The Commission Should Clarify that Requests for Independent Entity Variations for Recently Approved Reforms Will Be Reviewed in the Context of Whether the Entire Set of Reforms Taken as a Whole Meet the Final Rule’s Stated Goals; to the Extent the Commission Does Not So Clarify, PJM Seeks Rehearing**

1. *The IPRTF Tariff represents an integrated package of reforms and should not be altered in piecemeal fashion without regard to the balance of reforms developed by PJM and its stakeholders to address the needs of the PJM Region*

As explained in Section II, the June 14 Filing was a comprehensive, stakeholder-driven and supported effort that was accepted by the Commission during the rulemaking process that lead to the Final Rule. However, the Final Rule does not attempt to harmonize its highly prescriptive requirements with comprehensive alternative structures the Commission approved after the issuance of the NOPR such as PJM’s IPRTF Tariff. The Commission provides no explanation of how it squares its prescriptive Final Rule

requirements with those approved reform packages other than some non-specific hortatory statements that it does not intend to disturb existing processes. This has created considerable uncertainty as to parties' ability to rely on the existing processes during what could be an extended compliance process that has no deadline for Commission action.

Accordingly, the Commission should clarify that the Final Rule does not require PJM to implement the Final Rule's requirements in a way that would modify the reforms or change the balance of reforms in the Commission-approved IPRTF Tariff and that the Commission will review PJM's request for an independent entity variation in a holistic fashion, considering the IPRTF Tariff as an integrated, balanced package of reforms. In other words, the Commission should clarify that it will review PJM's request for an independent entity variation for the IPRTF Tariff by examining whether the *entire package of reforms taken as a whole* meets or exceeds the goals and requirements of the Final Rule, rather than forcing PJM and its stakeholders to engage in an item-by-item justification of every variation from every last detail of the Final Rule's requirements.

PJM is unique among transmission providers because while it started its interconnection process reform efforts immediately prior to the issuance of the NOPR and modeled many of its reforms on provisions adopted by other RTOs, PJM began the transition to its reformed process very shortly before the issuance of Order No. 2023. Requiring PJM to either overhaul its IPRTF Tariff entirely or justify each difference between its IPRTF Tariff and the Final Rule's *pro forma* interconnection procedures and agreements under the independent entity variation standard in its Order No. 2023 compliance filing, with the risk that some elements may be retained while other balancing elements will have to be changed, upset the very balance that led to stakeholder approval of the IPRTF Tariff and the balance struck in development of the IPRTF Tariff between

managing the interconnection process efficiently and treating interconnection customers fairly. It also would put a cloud of uncertainty on the processing of interconnection agreements and delay construction of projects, since the Final Rule contains a host of new responsibilities for transmission providers and rights for interconnection customers that differ from those in the carefully balanced IPRTF Tariff. The uncertainty and mid-process rule changes that would result from a myopic line-by-line analysis of the IPRTF Tariff as compared to the Final Rule's *pro forma* LGIP and LGIA, could lead to the exact unjust and unreasonable results Order No. 2023 seeks to avoid.

As an initial matter, having to proceed element by element through compliance would provide intervenors in the IPRTF proceeding an opportunity to re-litigate issues on which they did not prevail in that proceeding. Such re-litigation is contrary to judicial principles and would be a poor use of time.

Moreover, as the elements of the IPRTF Tariff are balanced among each other and are interdependent, a piecemeal approach to the compliance filing will significantly undermine the IPRTF Tariff. As an example of this, consider the structure and content of the cluster studies. In the IPRTF Tariff, there are three System Impact Studies ("SIS"), one in each phase of the process. The first SIS consists of a load flow study of the entire cluster.<sup>25</sup> This first SIS will identify high-level reliability issues caused by the proposed project, as well as performance issues identified by the relevant transmission owner, with the aim of identifying those items that are expected to generate the greatest cost to the interconnection customer.<sup>26</sup> These study results can be expected to cause a large number

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<sup>25</sup> See June 14 Filing at 58-59; Affidavit of Mark Sims (Attachment E) ¶¶ 5-8 ("Sims Aff."); Tariff, Part VII, Subpart D, section 308(A)(1)(a) and Part VIII, Subpart C, section 405(A)(1)(a).

<sup>26</sup> See June 14 Filing at 59; Sims Aff. ¶ 8.



of projects to withdraw from the process as they will reveal the costs of necessary network upgrades. Once the first SIS has winnowed out a number of projects, the second and third SIS will implement additional analysis methods, including short-circuit and stability studies,<sup>27</sup> all of which require separate models, input files, analytical simulation software, and post-processing work. PJM does not undertake short-circuit and stability studies in the first SIS because they are inherently time-consuming. By first using the faster, simpler load flow methodology, which historically has provided the most useful dollar impact information, PJM reduces the number of projects that must be studied using short-circuit and stability analyses. The IPRTF Tariff also requires PJM to complete the initial SIS within 120 calendar days,<sup>28</sup> thus providing this critical information to interconnection customers more rapidly than the 150 calendar days required by Order No. 2023, so that they can avoid placing money at risk unnecessarily.

The Final Rule, in contrast, includes only two studies, the cluster study and a cluster re-study, and requires all three methods of analysis, i.e., load flow, short-circuit, and stability, to be used in both of these studies.<sup>29</sup> If the Commission determined on compliance that PJM can retain its three-phase Cycle, with three cluster studies, under an independent entity variation, but rejected PJM's sequential application of the three study methodologies and required that each of the three studies use all three methods, the amount of time needed for interconnection studies would increase significantly and the efficiencies inherent in the screening function that the Phase I load flow studies provide would be lost.<sup>30</sup>

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<sup>27</sup> See June 14 Filing at 59-60; Sims Aff. ¶¶ 8-9; Tariff, Part VII, Subpart D, sections 310(A)(1)(a), 312(A)(1)(a) and Part VIII, Subpart C, sections 407(A)(1)(a), 409(A)(1)(a).

<sup>28</sup> Tariff, Part VII, Subpart D, section 308(A)(1)(b) and Part VIII, Subpart C, section 405(A)(1)(b).

<sup>29</sup> Order No. 2023 at P 259.

<sup>30</sup> The Final Rule would cause even greater delay in the affected system study process, as it also requires that affected system studies use all three methodologies. See Order No. 2023 at P 1160. If the Commission

2. *The Commission indicated the Final Rule was not intended to interfere with ongoing transition processes and reform efforts*

PJM requests clarification, consistent with Commission’s statements in the Final Rule, that complying with the Final Rule will not interfere with either PJM’s transition process, from its prior interconnection process to the IPRTF Tariff process, or, critically, with the new process under the IPRTF Tariff. The Commission asserted at the outset of the Final Rule that it is “not intended to divert or slow the potential progress” represented by efforts already undertaken to address interconnection queue management issues and also notes that compliance obligations “will be evaluated in light of the independent entity variation standard” for RTOs.<sup>31</sup> The Final Rule also reiterates that it is not intended to disrupt ongoing transition processes and describes how, on compliance, transmission providers can propose deviations from the Final Rule’s requirements, “including deviations seeking to minimize interference with ongoing transition plans,” and states it will consider such requests on a case-by-case basis.<sup>32</sup> The Final Rule provides clear protection to ongoing transition processes, clarifying that “transmission providers that have already adopted a cluster study process or are currently undergoing a transition to a cluster study process will not be required to implement a new transition process.”<sup>33</sup> Commissioner Mark C. Christie noted the need to avoid interfering with ongoing reform efforts, noting that “RTOs, such as PJM, have already launched extensive queue reforms” and that he is

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requires that PJM adopt the use of all three methodologies in affected system studies, PJM will need to coordinate power flow, stability, and short circuit analyses not only for all of PJM’s interconnection requests but also for all interconnection requests in every neighboring system, leaving PJM with no way to reduce the volume of its own studies and required to consider the volume of requests in neighboring systems as well as its own.

<sup>31</sup> Order No. 2023 at P 10 (footnote omitted).

<sup>32</sup> *Id.* at P 1765.

<sup>33</sup> *Id.* at P 861.

concurring in Order No. 2023 “because this final rule does contain language that is at least intended to recognize the efforts of RTOs to act on their own queue reforms without waiting on a Commission rulemaking.”<sup>34</sup>

However, while the Final Rule explicitly protects ongoing transitions to approved reform packages, it does not provide any guidance or direction as to how the Commission will harmonize the Final Rule with recently-approved interconnection reform packages such as the IPRTF Tariff. This leaves PJM at risk of having expended time, effort, and money and the resources of its personnel, consultants and counsel in preparing for the new IPRTF process only to be required to modify the systems, software, documentation, and procedures at a later date, possibly when the transition period ends. It would make little sense to protect the transition process but not the new process to which a transmission provider is transitioning, but the Final Rule leaves open that possibility.

Moreover, as noted previously, compliance processes and disposition of independent entity variation requests can take many months. Absent the Commission providing more direction and clarity as to how it will approach requests for independent entity variations for approved and ongoing interconnection reform packages such as the IPRTF in an order on rehearing of Order No. 2023, all interconnection customers and transmission providers will have to endure a prolonged state of uncertainty.

3. *The IPRTF Tariff provides many of the same features and benefits of the Final Rule’s pro forma LGIP and LGIA; any differences should be accepted under an independent entity variation, considering the IPRTF Tariff holistically*

In addition, while there are differences between the implementation mechanisms set forth in the IPRTF Tariff and Order No. 2023, these mechanisms serve the same goal

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<sup>34</sup> *Id.*, concur op. (Commissioner Christie) at PP 25-26.

and offer the same protections and benefits. For example, the IPRTF Tariff requires an interconnection customer to provide a single study deposit, based on the number of megawatts (“MW”) energy of capacity requested, whichever is greater. PJM explained that its graduated deposit structure represents a reasonable proxy for the cost of all three studies, and approximates the total amount that would be required for similar projects under PJM’s existing procedures.<sup>35</sup>

Order No. 2023 (at P 502) adopts a similar single deposit structure and, while the actual deposit amounts are different, in both instances there is a single deposit that is paid up front set at a level intended to discourage non-ready projects from entering a cluster.<sup>36</sup> In addition, all deposits are subject to a true-up,<sup>37</sup> so the interconnection customer will pay only its actual study costs under both the PJM and Order No. 2023 study deposit structures. Similarly, while the commercial readiness deposit amounts under Order No. 2023 and the IPRTF Tariff differ, both sets of requirements are intended to demonstrate readiness, and protect interconnection customers against otherwise underfunded network upgrade costs.<sup>38</sup> Other changes are simply differences in terminology—for example, the PJM Tariff uses the term “Project Developer” instead of interconnection customer and the term “Cycle” rather than “cluster.”<sup>39</sup> However, these differences do not affect the rights or obligations of PJM as transmission provider or of any interconnection customer.

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<sup>35</sup> June 14 Filing at P 44; Affidavit of Jason R. Shoemaker (Attachment D) ¶ 12 (“Shoemaker Aff.”).

<sup>36</sup> Order No. 2023 at P 503; Tariff, Part VII, Subpart C, sections 306(A)(5), 403(A)(5); *see also* June 14 Filing at 43-44.

<sup>37</sup> Order No. 2023 at P 504; Tariff, Part VII, Subpart C, sections 306(A)(5)(a)(iii)-(iv), 403(A)(5)(a)(iv); *see* June 14 Filing at 33, 51-53.

<sup>38</sup> Order No. 2023 at PP 692-93, 781; *see* June 14 Filing at 33, 51-53.

<sup>39</sup> For consistency purposes, PJM is using the terminology set forth in Order No. 2023 rather than the IPRTF Tariff.

Finally, PJM performs an integrated study and new service request process, whereby its interconnection procedures also apply to eligible customers requesting transmission services and parties requesting to build participant-funded merchant transmission upgrades. These types of customers and services are not addressed in Order No. 2023. Any mandate to substantially revise or overhaul the IPRTF Tariff will affect these services, despite the fact they are outside of the scope of Order No. 2023.

4. *The Final Rule creates notable inconsistencies with the IPRTF Tariff, creating uncertainty as to the Commission's approach to harmonizing the IPRTF Tariff with the Final Rule*

*Gated clusters versus annual, overlapping clusters*

The Final Rule appears to mandate an annual cluster study process.<sup>40</sup> The Commission also rejected the suggestion that the study process should only permit transmission providers to conduct one cluster study at a time and declined to prohibit overlapping cluster studies,<sup>41</sup> which seems to mandate overlapping studies. However, as part of its June 14 Filing, PJM adopted a “gated” cluster process, whereby each cluster is effectively gated from earlier clusters such that the start of each new cluster may not occur until certain steps in the prior cluster have been completed. For example, under the New Rules, Phase II of a specific cluster will not start unless Decision Point III of the prior cluster has been reached, and Phase III of a specific cluster will not commence until the final negotiation stage of the prior cluster has been concluded.<sup>42</sup> While there may be some overlap, PJM does not intend to run multiple overlapping studies. Thus, the IPRTF Tariff's structure specifically keeps PJM and relevant transmission owners focused on the older

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<sup>40</sup> Order No. 2023 at P 227.

<sup>41</sup> *Id.* at P 228.

<sup>42</sup> Tariff, Part VIII, Subpart C, sections 407(A)(1)(e), 409(A)(1)(e).

studies that have been waiting, rather than redirecting resources to new entrants. For the PJM Region at least, the IPRTF Tariff’s gating structure is superior to the use of a cascading cluster process.

The IPRTF Tariff’s gating mechanism is necessary to allow PJM to treat each cluster as a discrete group, and protects PJM from having to address a large number of requests in one cluster while still undertaking the studies required for a prior cluster.<sup>43</sup> This approach will serve to reduce uncertainty as to which facilities are needed for a specific cluster<sup>44</sup> and should simplify cost allocation and reduce uncertainty as to which facilities are needed for a specific cluster. In addition, the use of this gating mechanism will help reduce the need for restudies and the resulting backlog,<sup>45</sup> and will be necessary given the expected size of each PJM cluster. Thus, PJM’s gating mechanism makes PJM’s process superior to the Final Rule’s annual cluster study process that has no limits on overlap between clusters. This is yet another example where the lack of discussion in the Final Rule as to how the Final Rule is to be harmonized with ongoing reformed processes, a significant issue given the highly prescriptive requirements of the Final Rule, will lead to a prolonged period of uncertainty and erode confidence that PJM’s approved reforms can proceed to address the interconnection queue backlogs.

*Length of “customer engagement window”*

As a further example of the need for harmonization in approach as between the IPRTF Tariff and the Final Rule, compare the Final Rule’s 60-day “customer engagement

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<sup>43</sup> June 14 Filing at 30, 35-36; Shoemaker Aff. ¶¶ 14, 35.

<sup>44</sup> June 14 Filing at 30, 35; Shoemaker Aff. ¶¶ 14-20, 35-41.

<sup>45</sup> June 14 Filing at 30, 35-36; Shoemaker Aff. ¶¶ 14, 35.

window,”<sup>46</sup> i.e., the application window, to the longer IPRTF Tariff application window. The IPRTF Tariff’s application window is longer (90 days)<sup>47</sup> because it includes an extra 30 days during which interconnection customers may review the study models, which includes all new interconnection requests that have entered the cluster before any readiness deposits are “at-risk.” This extra time and opportunity to review PJM-provided models benefits interconnection customers in a way the Order No. 2023 *pro forma*’s 60-day window does not, and provides yet another reason for the Commission to clarify that the Final Rule will not require an element by element evaluation of PJM’s compliance filing.

5. *PJM seeks clarification or rehearing of the Final Rule’s requirements as to the timing of heatmap posting and updates*

PJM seeks rehearing of the Final Rule’s blanket requirement to update the heatmap 30 calendar days after the completion of each cluster study because it is unreasonable. While that requirement may be suitable for certain transmission providers, it does not suit a large multi-state RTO such as PJM, that expects to have hundreds of interconnection requests in each cluster. Publishing study results to Queue Scope is not a desktop or administrative exercise. It requires a detailed and precise analysis of the entire PJM system using the latest inputs available at the time. The Final Rule’s requirement would hold PJM to an unrealistically strict and expedited schedule of updating data, tools, simulations and results. The 30-day deadline and the fact that it would be required several times per year make this requirement burdensome and adds to the scope of study work required, which inherently takes away resources from other study and processing efforts. Instead, PJM anticipates preparing studies to be published annually. In addition, the models are already

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<sup>46</sup> Order No. 2023 at P 232.

<sup>47</sup> Tariff, Part VII, Subpart C, section 306(B)(3) and Part VIII, Subpart B, section 403(B)(3).

made available to interconnection customers via a Critical Energy Infrastructure Information (“CEII”) request, providing them access to data that can be used to assess potential points of interconnection.

6. *Affected systems provisions*

PJM seeks clarification that the Final Rule’s requirement that all affected system studies must be performed using ERIS (Energy Resource Interconnection Service) criteria<sup>48</sup> will not apply to studies PJM undertakes under its IPRTF Tariff as the affected system transmission provider. PJM studies both interconnection customers connecting directly to PJM and affected system customers for generator deliverability, which ensures that the project’s output will be deliverable anywhere on PJM’s system. Studying affected systems customers using a different, and lesser, standard than is applied to directly connected generators would be unduly discriminatory and inconsistent with how PJM plans its system.

7. *Alternative request for rehearing*

Should the Commission decline to grant PJM’s request that the Commission provide a clear signal on rehearing (1) as to how it will harmonize the Final Rule with recently approved interconnection reform packages such as the IPRTF Tariff; and (2) that it will approach PJM’s request for an independent entity variation for the IPRTF Tariff by considering whether the *entire package of IPRTF reforms taken as a whole* meets or exceeds the goals and requirements of the Final Rule, rather than forcing PJM and its stakeholders to engage in an extensive justification of every variation from every last detail of the Final Rule’s requirements, PJM requests rehearing of the Final Rule. The generic

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<sup>48</sup> Order No. 2023 at P 1276.



findings in the Docket No. RM22-14-000 rulemaking on which the Final Rule is based cannot apply to the IPRTF Tariff due to the fact that PJM filed, received Commission approval of, and began implementing the IPRTF Tariff during virtually the same period of time that elapsed between the issuance of the NOPR and the issuance of the Final Rule.<sup>49</sup> Thus, any evidence the Final Rule contains as to PJM’s interconnection process<sup>50</sup> is stale data, the use of which would not constitute reasoned decision making based on substantial evidence or a consideration of the relevant factors.<sup>51</sup>

PJM also seeks rehearing of the Final Rule because the Commission failed to establish a presumption that recently-approved and ongoing interconnection process reform packages such as the IPRTF Tariff comply with the Final Rule.<sup>52</sup> Such a presumption, particularly as applied to the IPRTF Tariff, which the Commission found to be just, reasonable, and not unduly discriminatory or preferential and accepted eight

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<sup>49</sup> As explained above, PJM filed the IPRTF Tariff two days before the Commission issued the NOPR, received approval of the IPRTF Tariff between the dates for filing initial and reply comments on the NOPR, and began the transition period of the IPRTF Tariff 18 days before the Commission issued the Final Rule.

<sup>50</sup> PJM notes that some of the evidence included in Order No. 2023 requires further context and explanation. Order No. 2023, Appendix B, Table 4 presents end of year study delays for 2020, 2021, and 2022 for several RTOs, including PJM. This table does not present end of year delay information for SPP and contains a note stating, “SPP is transitioning to a new interconnection study process and thus its data is not clearly comparable to the other RTOs/ISOs.” The data reflected for PJM in the table also should have been noted as not comparable to the other RTOs/ISOs for much the same reason. PJM’s end of year delays in 2020 are lower than MISO’s and comparable, given PJM’s size, to other RTOs’ delays. However, PJM commenced its IPRTF process at the end of 2020/beginning of 2021, and, in April 2021, paused interconnection studies for new interconnection requests that would be studied under the reformed rules so that it could focus on the backlog of older projects that needed to be finished before PJM could transition to the new process.

<sup>51</sup> *See Motor Vehicle Manufacturers*, 463 U.S. at 43 (stating an agency must examine the relevant data and that an agency’s decision will be arbitrary and capricious if it “failed to consider an important aspect of the problem;” also indicating that an agency must explain its change in position); *BP*, 828 F.3d at 965 (citing to obligation to consider relevant factors, and stating “[w]here an explanation is lacking or inadequate, the court must remand”); *Southwest*, 926 F.3d at 858 (vacating and remanding decision below and stating that while the Commission depart from its prior line of policy, it must acknowledge it is doing so and provide a reasoned explanation for the change); *see also North Carolina*, 584 F.2d at 1012 (remanding Commission decision that was based on stale data that did not reflect current conditions).

<sup>52</sup> Order No. 2023 at P 1765.

months before issuing the Final Rule,<sup>53</sup> would free the IPRTF Tariff from the cloud of uncertainty the Final Rule has created and avoid the need for immediate clarification as to how the Commission will approach PJM’s request for an independent entity variation for the IPRTF Tariff.

Even better, such a presumption would eliminate the prospect of a protracted compliance process during which PJM and its stakeholders will hesitate to invest further time, resources, and money in an interconnection process that may have to be substantially transformed on compliance, which raises the prospect of the IPRTF Tariff failing purely because of administrative delay and too much process. Such a perverse result reveals an internal inconsistency in the Final Rule: the Final Rule seeks expedition and efficiency in interconnection processes, recognizes the efforts some transmission providers already have made toward that end, but refuses to grant those transmission providers relief from having to re-justify their efforts based on a generic rulemaking. The Final Rule’s imposition of process for the sake of process, regardless of the delay and inefficiency it may cause, does not represent reasoned decision making.<sup>54</sup> On rehearing, the Commission should reverse this aspect of the Final Rule and provide the requested presumption.

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<sup>53</sup> See November 2022 Order at PP 30, 33 (stating the IPRTF Tariff provisions are just and reasonable, and that “PJM’s proposed reforms should provide PJM with the ability to reduce the current backlog more quickly than possible under its current rules and ultimately result in the more efficient and timely processing of New Service Requests”); *id.* at PP 60, 64 (stating the transition mechanism and expedited process are reasonable procedures to address the backlog in the PJM interconnection queue); *id.* at P 80 (stating that requiring interconnection customers to demonstrate site control, post security and meet readiness requirements is appropriate to ensure a project is viable before entering into a final interconnection agreement); *id.* at P 99 (accepting PJM’s Site Control rules, and stating “as a general matter, more stringent site control requirements may help reduce the number of speculative, duplicative, and non-ready projects entering the interconnection queue” (footnote omitted)).

<sup>54</sup> See *Motor Vehicle Manufacturers*, 463 U.S. at 41, 43 (stating an agency decision “may be set aside if found to be ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,’” and indicating that the agency must examine the data and provide a satisfactory explanation for its determinations (quoting 5 U.S.C. § 706(2)(A); *NEPGA*, 881 F.3d at 210 (stating that an agency must examine the relevant data and provide a satisfactory explanation for its decisions and respond meaningfully to the argument that are raised); *Ameren Services*, 880 F.3d at 581 (stating that a failure to respond to a contention that was raised

Further, the June 14 Filing was the culmination of an 18-month-long stakeholder process, with multiple meetings and opportunities for input from interested parties, which resulted in a filing package that was overwhelmingly supported by stakeholders.<sup>55</sup> Failure to grant rehearing of the Final Rule thus would serve to undermine confidence in the use of stakeholder processes to address major issues of concern in an RTO, and would be inconsistent with Commission-precedent favoring the use of stakeholder processes. The Commission’s policy is to respect filings that are the result of an involved stakeholder process to address regional issues, with compromises made on all sides, and high levels of stakeholder support for the final package of reforms, and it should do so here.<sup>56</sup>

**B. The Commission Should Grant Rehearing of Its Decision to Eliminate the Reasonable Efforts Standard and Impose Study Delay Penalties**

Despite the arguments raised by numerous commenters, the Final Rule eliminates the Reasonable Efforts standard that has governed transmission providers’ conduct of interconnection studies for decades and imposes a strict liability penalty regime for

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appropriately “makes FERC’s decision arbitrary and capricious” (citation omitted)); *Emera*, 854 F.3d at 27 (noting courts have a duty to remand decisions that are contrary to the substantial evidence or are not the result of reasoned decision making); *PSEG*, 665 F.3d at 208, 210 (stating FERC’s failure to respond meaningfully to a party’s objections renders its findings arbitrary and capricious, also stating that “[t]o characterize objections, however, is not to answer them”); *PPL Wallingford*, 419 F.3d at 1198, 1200 (stating FERC has the obligation to respond meaningfully to an intervenor’s objections, and rejecting FERC orders that “contained no response” to arguments raised by petitioner below and “did not address PPL’s evidence at all”); *CAPP*, 254 F.3d at 299 (indicating that the Commission’s failure to respond meaningfully to party’s argument “renders its decision . . . arbitrary and capricious” and “[u]nless the Commission answers objections that on their face seem legitimate, its decision can hardly be classified as reasoned”).

<sup>55</sup> See *supra* note 13.

<sup>56</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, at P 561 (“[R]egional solutions that garner the support of stakeholders, including affected state authorities, are preferable.”), *order on reh’g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh’g & clarification*, Order No. 890-B, 123 FERC ¶ 61,229 (2008), *order on reh’g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

interconnection study delays. Specifically, the Final Rule provides the following per business day penalty structure:<sup>57</sup>

	Penalty per business day
Cluster Study delay beyond deadline	\$1,000
Cluster Restudy delay beyond deadline	\$2,000
Affected System Study delay beyond deadline	\$2,000
Delays of Facilities Studies beyond Tariff-specified deadline	\$2,500

*1. Clarification on penalty calculation*

First, in order to gain a better sense of the magnitude of the penalties the Final Rule would impose, PJM requests clarification that the penalties listed in the chart above are per study, per business day, rather than per interconnection customer in the cluster, per business day. The latter would result in extremely large penalty amounts that would exacerbate all the other problems with penalties discussed herein.<sup>58</sup> PJM notes that MISO, SPP, and PJM are seeking this clarification in a separate motion for clarification being filed contemporaneously with this pleading.

*2. Rehearing of study delay penalties*

PJM seeks rehearing of the elimination of the Reasonable Efforts standard and imposition of study delay penalties and urges the Commission to reconsider this aspect of the Final Rule. Because the penalties will not be imposed until two cluster study cycles

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<sup>57</sup> Order No. 2023 at PP 965, 973.

<sup>58</sup> The impact can be demonstrated by considering a cluster made up of 100 interconnection requests, the study of which has been completed 100 days late. If the penalties are per study, per business day, the total penalty would \$100,000 (100 days times \$1,000 per day). However, if the penalties are assessed per interconnection customer in the cluster, per business day, the amount would be \$10 million, an amount that is both significantly higher and unreasonable.

have been completed under the Final Rule,<sup>59</sup> and because the Final Rule’s penalties raise a host of legal and practical issues, the Commission should provide additional time and take further comment on this issue so as to avoid creating a logjam of litigation over whether penalties are appropriate and, if so, who should pay them, how and when they should be collected, and to whom they should be disbursed.

- a. The Commission should grant rehearing of the Final Rule’s penalty provisions as they violate section 315 of the FPA

Section 315 of the FPA sets forth the Commission’s authority to assess penalties for willful failure to comply with a Commission order, rule, or regulation or to timely file a required report.<sup>60</sup> Section 315 also makes clear that the forfeitures collected for such failures are to be remitted to the Treasury.<sup>61</sup>

To the extent the Commission calls the amounts it would require transmission providers to return if interconnection studies are delayed “penalties” and the amount of these “penalties” is not damages or disgorgement of unjust enrichment and is not proportionate with any demonstration of harm from the study delays, the Commission should be required to abide by the requirements of FPA section 315. The Commission has failed to do so, however, as it would require transmission providers to set forth the study delay penalties in their tariffs and administer the penalty regime for the Commission, rather than assessing penalties itself. Moreover, rather than having the penalties remitted to the Treasury, the Final Rule requires transmission providers to remit penalty amounts to interconnection customers.

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<sup>59</sup> Order No. 2023 at P 963.

<sup>60</sup> 16 U.S.C. § 825n(a).

<sup>61</sup> 16 U.S.C. § 825n(b).

While it is true RTO tariffs and other tariffs contain various penalty provisions, there is a significant difference between a public utility including a penalty provision as part of its proposed tariff mechanism pursuant to FPA section 205 and the Commission imposing a mandate on transmission providers to include such a provision in their tariffs involuntarily, call it a penalty, and use the compliance process to bypass the penalty provisions that Congress established in Section 315 of the FPA. Rehearing should be granted given these legal infirmities in the Final Rule, in addition to the many other problems associated with the penalty provisions that make them unworkable and support PJM's position that the Commission should not impose penalties for study delays.

b. No evidence penalties will work as intended

While the Commission opines in the Final Rule that imposition of study delay penalties is necessary to provide an incentive to transmission providers to complete studies on a timelier basis,<sup>62</sup> the Commission fails to provide a meaningful response to the arguments raised by PJM and others that imposing such penalties will not address the root causes of study delays—the volume of interconnection requests. Recent queue windows in PJM have contained upwards of 1,000 interconnection requests in a 12-month period.<sup>63</sup> The Commission provides no evidence or reason to believe that eliminating the Reasonable Efforts standard and replacing it with strict liability for delays in the form of so-called penalties that are imposed whether there is fault or not, will reduce interconnection study delays.

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<sup>62</sup> Order No. 2023 at PP 966, 972, 976-77.

<sup>63</sup> See June 14 Filing at 4-5 (Figures 1 and 2); Connell Aff. ¶¶ 8-9 (Figures 1 and 2). PJM's prior queue process included two six-month queue windows in each one-year period. See June 14 Filing at 4.

c. Poorly defined penalty regime with multiple due process problems

Moreover, the Final Rule fails to explain how removing force majeure as a reason penalties would not apply<sup>64</sup> and refusing to impose penalties “only where a factor can be conclusively demonstrated to be within a transmission provider’s control”<sup>65</sup> is logical, let alone how it is consistent with due process rights. Instead, the Final Rule argues that details such as whether the penalized transmission provider actually is responsible for the study delay are “addressed to some extent through the ability to appeal.”<sup>66</sup> A process that provides due process only “to some extent” violates fundamental Constitutional protections and therefore cannot be just and reasonable.<sup>67</sup>

Further, the Final Rule’s penalties are imposed on a strict liability basis, reducing their deterrence and incentive effects. If a transmission provider knows it will be penalized for *any* delay in interconnection studies regardless of its role in the delays, and will have to appeal that penalty and demonstrate that the penalty imposed on it should not be assessed, i.e., that it is guilty until it can prove its innocence, it might reasonably ask what deterrence or incentive purpose the penalty actually serves. And the ‘penalties,’ which are paid to interconnection customers rather than the Treasury, might better be described as

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<sup>64</sup> Order No. 2023 at P 1003.

<sup>65</sup> *Id.* at P 989; *see also id.* at P 966 (stating “[t]here is every reason to believe that many of the factors contributing to significant interconnection queue backlogs and delay—including the rapidly changing resource mix, market forces, and emerging technologies—will persist” and “we are not finding that transmission providers have necessarily acted in bad faith”).

<sup>66</sup> *Id.* at P 989.

<sup>67</sup> The Commission has recognized the need to protect due process rights in other instances. *See Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at PP 40, 51 (2008) (describing steps the Commission will take to protect due process and stating “we implement these statutory mandates and our due process obligations by taking into account numerous factors in determining the appropriate civil penalty for a violation, including the nature and seriousness of the violation and the company’s efforts to remedy it”). FPA section 316A, 16 U.S.C. § 825o-1, also requires the Commission to provide “notice and opportunity” for a public hearing, before imposing any penalties and take into account the severity of the violations and steps by the party to remedy the violations in a timely manner.

rebates or refunds of study costs to interconnection customers, who need not be blameless for the delays to receive their study deposits back.

The issues with the penalty proposal are aggravated by the fact that, at the same time it threatens penalties for delays, the Final Rule piles on additional time consuming study and reporting requirements (and, to make matters worse, the penalty regime itself will require time-intensive administration to track study metrics, pursue penalty appeals, and collect and disburse penalty amounts). The Final Rule would require PJM to complete its three-phase cluster study cycle in less than six months (150 days) and, as discussed in Section IV.A.1, would require all three analysis methodologies to be used in all three studies.<sup>68</sup> This simply is not possible in a region such as the PJM Region, where the typical queue over a one-year period in the last few years has included in excess of 1,000 projects.<sup>69</sup> Further, contrary to the Final Rule’s assumption that queue sizes are reduced in a first-ready, first-served cluster process, MISO received more than 960 requests following the close of its 2022 Definitive Planning Process cycle that closed in 2022.<sup>70</sup>

d. The Commission fails to address the many reasons the penalties will be unworkable in practice

Nor does the Commission provide any meaningful response to reasons the penalty regime will be unworkable. Commenters argued that, given the shortage of trained engineers, transmission providers and transmission owners may not be able to hire sufficient staff to complete studies in the time allotted.<sup>71</sup> PJM also raised this point in the

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<sup>68</sup> See Order No. 2023 at PP 317, 324.

<sup>69</sup> See *supra* note 63.

<sup>70</sup> See Initial Comments of MISO, Docket No. RM22-14-000, at 4 (Oct. 13, 2022) (“MISO Initial Comments”).

<sup>71</sup> PJM asserted that it is not clear how it and other transmission providers will be able to hire contract employees to perform interconnection studies when the funds that would be used to pay the contract employees would be returned to the interconnection customers if studies are delayed, particularly when the



IPRTF Filing.<sup>72</sup> Nevertheless, the Commission maintains without evidentiary support that “[w]ith the benefit of fewer studies and fewer speculative generating facilities in the interconnection queue, we expect that a transmission provider that faces the potential of a study delay penalty for failing to meet interconnection study deadlines will be able to allocate sufficient resources to conduct interconnection studies.” This bald assertion in the face of substantial evidence that the resources do not exist fails the test of reasoned decision making.<sup>73</sup> The Commission also failed to provide a meaningful response to concerns that the penalty provisions would undermine the constructive collaboration between an RTO and the transmission owners in its region that is needed to process studies in a timely manner without each of these parties feeling the need to simply protect against legal exposure. Moreover, it does not provide an adequate response to the showings that attempting to assign “fault” or responsibility for study delay would be difficult to determine and likely lead to litigation over who has the “most control” over the studies, who caused the study delays, and whether granting an appeal of the penalties is warranted.<sup>74</sup>

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pool of qualified engineers—the RTOs, transmission owners, and project developers—all are trying to draw from is limited, and that there is the concern that qualified engineers may not want to work for RTOs or transmission owners if they risk being identified as a cause of study delays that result in penalties or face potential liability. PJM Initial Comments at 61; Initial Comments of Ameren Services Company, Docket No. RM22-14-000, at 20-21 (Oct. 13, 2022); Initial Comments of American Electric Power Service Corporation, Docket No. RM22-14-000, at 24-29 (Oct. 13, 2022); Initial Comments of ISO/RTO Council, Docket No. RM22-14-000, at 3-5 (Oct. 13, 2022); Initial Comments of MISO at 8-9, 13-18, 71-78. PJM and other commenters also stated if implemented, this proposal gave would give rise to complex issues as to how RTOs would recover and study delays penalties assessed against them, and could erode the working relationship of RTOs and the transmission owners in their footprint. PJM Initial Comments at 57-58.

<sup>72</sup> June 14 Filing at 21 n.63; Connell Aff. ¶ 14 (indicating that PJM’s ability to process and study the massive number of interconnection requests it receives is hampered by a tight labor market and extraordinary competition for the highly skilled individuals needed).

<sup>73</sup> See *supra* notes 5, 59.

<sup>74</sup> The determination of who is responsible for a study delay will be difficult in an RTO context, because a study cluster will likely include hundreds of interconnection customers and multiple transmission owners. This will present issues of how to apportion the study delay penalties if it is determined that some interconnection customers [or transmission owners] contribute to a delay, while others do not. In such a situation, it is unclear whether all interconnection customers would receive a refund of their study costs, or just those who are determined not to be at fault.

- e. Penalties are particularly ill-suited to PJM's interconnection process

The Final Rule's penalty regime cannot practically be implemented within PJM's interconnection process, as the IPRTF Tariff's cycle-phase process operates on a foundation of completing multiple studies simultaneously within a cycle structure. A PJM Cycle encompasses a multitude of projects spanning the entire PJM territory, often involving hundreds of projects. Its fundamental purpose is to evaluate all projects simultaneously, allowing changes only within defined Decision Point windows.

PJM collaboration with PJM Transmission Owners is fundamental to detailed evaluation of interconnection projects, evaluation of the transmission system, and to the new Cycle process. Under the new Cycle process, PJM collaborates with all Transmission Owners to complete Physical Interconnection Facility studies by the conclusion of Phase II. PJM also will collaborate with Transmission Owners to complete Network Upgrade Facility Studies by the conclusion of Phase III. This requires PJM and all Transmission Owners in the PJM Region to coordinate in unison and submit these studies concurrently for all Cycle projects. This structure is essential to the success of the PJM Cycle process.

Crucially, if one Transmission Owner fails to submit a Facility Study on time, it results in a comprehensive delay across the entire Cycle. On-time performance of the Cycle is contingent on all projects meeting all advancement requirements collectively and on time, further intensifying the interdependency of Cycle projects.

The Final Rule's penalty provisions would wreak havoc on this coordinated and interdependent study process. A single Transmission Owner's delay in one Facility Study could potentially lead to substantial penalties with respect to all cluster projects in every Transmission Owner zone in PJM, with the cumulative penalty potentially reaching

exorbitant sums. For example, a Cycle consisting of 200 projects would result in a Transmission Owner paying \$200,000 per day it is late providing a single Facility Study.<sup>75</sup> Under this calculation, a cluster study delay of 2 weeks could result in a fine of \$3,000,000.

PJM acknowledges the importance of accountability, but firmly believes that the Final Rule's penalties, when applied within the IPRTF Tariff's Cycle framework, could result in unintended and inequitable consequences.

f. The Commission should grant rehearing as to penalties

In short, the Final Rule presents no evidence supporting study delay penalties as an effective method of increasing the speed of interconnection processes and ignores the substantial concerns and reasons to believe that removing the Reasonable Efforts standard and imposing study delay penalties would do more harm than good. As such, this aspect of the Final Rule is arbitrary and capricious, fails the test of reasoned decision making, and should be reversed on rehearing.<sup>76</sup> PJM is joining in a request for clarification concerning the Final Rule's penalty provisions that PJM, MISO, and SPP are filing concurrently with this pleading. The joint RTOs' clarification request is without prejudice to individual RTO arguments that the entire penalty regime should be reconsidered on rehearing.

**C. The Commission Erred in Requiring Transmission Providers to Make Surplus Interconnection Service Available as Soon as the Original Interconnection Customer Has an Executed LGIA**

As the Commission proposed in the NOPR, the Final Rule would allow interconnection customers access to Surplus Interconnection Service process as soon as the

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<sup>75</sup> This calculation assumes that the Final Rule intends the study delay penalties to be calculated per interconnection project, per day, rather than per study, per day.

<sup>76</sup> See *Motor Vehicle Manufacturers*, 463 U.S. at 41, 43; *NEPGA*, 881 F.3d at 210; *Ameren Services*, 880 F.3d at 581; *Emera*, 854 F.3d at 27; *PSEG*, 665 F.3d at 208, 210; *PPL Wallingford*, 419 F.3d at 1198, 1200; *CAPP*, 254 F.3d at 299.

initial interconnection customer has an executed LGIA or requests the filing of an unexecuted LGIA.<sup>77</sup> The expansion of Surplus Interconnection Service to such an early stage of project development when the basic Surplus Interconnection Service construct provides minimal to no value makes little sense. PJM criticized the NOPR's proposal to expand Surplus Interconnection Service because the current construct is not used due to the challenge of assessing the impact of adding a surplus resource to the transmission system while not infringing on the rights of the interconnection customers in the queue, including their rights to the "headroom" on the system.<sup>78</sup> To date, PJM's experience has been that requests for Surplus Interconnection Service impose administrative and overhead costs for items such as processing applications, database support, training, and other resources but do not result in service to customers choosing to interconnect.<sup>79</sup>

The Final Rule not only fails to respond to commenters' concerns about the limited value of Surplus Interconnection Service, it proceeds as proposed to expand the availability of Surplus Interconnection Service to the point in time at which the initial interconnection customer has nothing more than an executed LGIA or has requested filing of an unexecuted LGIA. At that point, however, none of the network upgrades or customer interconnection facilities will have been built so there will be no service, much less "surplus" service, available. Moreover, in light of the fact that 47 percent of the projects in PJM that have executed or filed, unexecuted interconnection service agreements do not reach commercial operation, the greatest possible gain of interconnected projects through studying Surplus Interconnection Service associated with projects at that stage is less than 50 percent. In

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<sup>77</sup> See Order No. 2023 at P 1438; NOPR at P 264.

<sup>78</sup> PJM Initial Comments at 69.

<sup>79</sup> See, e.g., PJM Initial Comments at 69.

sum, the Final Rule introduces one more source of additional study, with the attendant administrative burdens and increased study times, thereby detracting from the timely completion of interconnection studies. It does this for little additional benefit to interconnection customers, while increasing the potential for study delay penalties to be assessed on the transmission provider and/or transmission owners.

In addition, problems may arise in the event the generating facility associated with the initial interconnection request utilizes one type of fuel and the customer seeking Surplus Interconnection Service proposes a generating facility with a different fuel type, as is likely to occur given the Commission's contemplation of hybrid projects combining generation and battery storage. Different fuel types can have very different electrical characteristics and studying different fuel types behind a single point of interconnection introduces complexities. While PJM is cognizant of the potential efficiencies of co-locating generation and storage, such hybrid projects should be studied consistently within a cluster, rather than piecemeal at disjointed points in time as "surplus" service.

PJM therefore seeks clarification that it is entitled to an independent entity variation to not provide Surplus Interconnection Service at such an early stage of project development or to not provide the service at any stage if it demonstrates that Surplus Interconnection Service requests are inconsistent with the IPRTF Tariff's cluster study processes and will hinder efficient and timely, clustered interconnection studies. To the extent the Commission does not so clarify, PJM seeks rehearing of the expansion of Surplus Interconnection Service as arbitrary and capricious. The stated goal of the Final Rule is to speed up interconnection processes, but the expansion of Surplus Interconnection Service, with all its attendant additional studies and procedures imposed for little benefit, will have

the opposite effect. These conflicting imperatives represent a lack of reasoned decision making.

**D. The Commission Errs in Requiring the Use of Customer-Provided Operating Assumptions for Storage Projects in Interconnection Studies**

Order No. 2023 directs transmission providers to use operating assumptions in interconnection studies that reflect the proposed charging behavior of electric storage resources, at the request of the interconnection customer, unless Good Utility Practice, including applicable reliability standards, otherwise requires the use of different operating assumptions.<sup>80</sup> The Final Rule states that a transmission provider does not have to use customer-supplied operating assumptions that it determines are inconsistent with Good Utility Practice,<sup>81</sup> but requires the transmission provider to provide an explanation as to why the operating assumptions are inappropriate and allows the interconnection customer a further opportunity to re-submit its proposed parameters and any control technologies it would use to limit the operation of its resource to the intended operation.<sup>82</sup>

The Final Rule's requirement that transmission providers treat one specific type of resource in a uniquely advantageous manner, with the express purpose of reducing that resource type's responsibility for network upgrades,<sup>83</sup> is unduly discriminatory, will impose additional administrative burdens on transmission providers and slow down interconnection studies (thereby presenting one more hurdle transmission providers and transmission owners would have to overcome to avoid penalties), is impractical, and could jeopardize reliability and/or shift costs to load. The Final Rule provides no clear basis for

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<sup>80</sup> Order No. 2023 at P 1509.

<sup>81</sup> *Id.* at P 1511.

<sup>82</sup> *Id.* at PP 1511, 1515.

<sup>83</sup> *Id.* at P 1510.

favoring storage projects over all other types of generating resources or, indeed, other types of load. To the extent the Final Rule seeks to reduce the network upgrade costs for which storage facilities are responsible because the Commission believes such resources can limit their withdrawals of energy at peak and thereby impose less stress on the system,<sup>84</sup> the Commission errs.

The Final Rule would create a special interconnection study within the larger cluster interconnection study for each storage project whose owner submits its operating parameters. Even if the use of planning standards and analyses *and* operating assumptions in a single study can be reconciled (as discussed below), the overlay of multiple unit-specific studies on the entire cluster study is likely to add more time to the interconnection study process. Such a result would be contrary to Order No. 2023's stated goal of facilitating the prompt completion of interconnection studies.

In addition, the requirement that the transmission provider must provide the interconnection customer with a clear explanation in writing of why the submitted operating assumptions are insufficient or inappropriate by no later than 30 calendar days before the end of the customer engagement window, and allow the interconnection customer to revise and resubmit the proposed operating assumptions,<sup>85</sup> simply imposes more administrative burdens on a transmission provider, adding more time to the processing of interconnection requests.

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<sup>84</sup> Order No. 2023 does not define what "peak" means. PJM studies the system under stressed conditions for a reason: to ensure the delivery of energy and allow operations the flexibility to mitigate real time issues. The planning parameters for each fuel type, including storage, are best left to be detailed in an RTO's business practice manuals rather than considered on a case-by-case basis in order to allow project developers to avoid network upgrades.

<sup>85</sup> Order No. 2023 at P 1511.

Further, transmission providers will not be able to readily integrate real-time operating assumptions into their interconnection studies because interconnection studies are planning studies and as such they analyze a longer time frame. Studying customer-provided operating assumptions in conjunction with planning standards is fundamentally inconsistent with how transmission providers perform planning studies.<sup>86</sup> The purpose of interconnection studies is to determine the network upgrades needed to ensure that system conditions that limit the availability and usefulness of resources are addressed and ameliorated. These studies are neither predicting nor incorporating the real-time dispatch of resources or withdrawals of load or storage resources.

Finally, the Final Rule's reliance on control technologies to limit storage facilities' real-time operations to the operating parameters on which the interconnection of these facilities has been studied is misplaced. As MISO stated in its comments on the NOPR, transmission providers have "no ability to monitor in real time if an Interconnection Customer violates its Quarterly Operating limit or offers into the market above that amount."<sup>87</sup> Moreover, the Final Rule does not explain how transmission providers would police storage resources' operations and enforce the operating assumptions on which their interconnection studies were based.

In the end, the consequence of reducing the costs of network upgrades for which storage facilities are responsible, based on real-time operating parameters, will be that not all the required network upgrades to interconnect all resources, including storage facilities, will be built, which could threaten reliability, or the costs of the necessary network

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<sup>86</sup> See, e.g., PJM Initial Comments at 70.

<sup>87</sup> Order No. 2023 at P 1486 (citing MISO Initial Comments at 116).



upgrades that storage facilities are relieved of will be shifted to load.<sup>88</sup> Neither result is appropriate.

PJM notes that it has joined MISO and SPP in a request for rehearing on this issue that is being filed concurrently with this pleading. The Commission should heed the concerns of these three large RTOs and grant rehearing on this issue so as to avoid this ‘one off’ exception to paying for the full costs of upgrades required for a facility’s interconnection based on real time changes to a unit’s withdrawals from the system that cannot be monitored or enforced.

**E. The Commission Erred by Requiring Transmission Providers to Consider an Interconnection Customer’s Proposed Addition of a Second Generating Facility at the Same Point of Interconnection**

The Final Rule requires transmission providers to evaluate an interconnection customer’s proposed addition of a second generating facility at the same point of interconnection as the generating facility for which it originally requested interconnection, prior to deeming such an addition a material modification, if the addition does not change the originally requested interconnection service level.<sup>89</sup> However, the Commission fails to address the concerns PJM raised in its NOPR comments that locating an additional facility at the site of the first project can affect other interconnection customers, especially if the additional facility has a different fuel type than the initial facility.

In addition, the Final Rule fails to address the fact that performing a material modification analysis is time consuming and often requires redoing the stability and short circuit studies, which are the most time-consuming analyses. This result would impose

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<sup>88</sup> Moreover, any such operating parameters may limit the effectiveness of interconnecting storage facilities. Storage is intended be a fast-acting resource that can ramp and respond quickly. If storage resources limit themselves to certain operating parameters, they may be limiting their usefulness in real-time.

<sup>89</sup> Order No. 2023 at P 1406.

additional time-consuming studies and would be contrary to the Commission's stated desire to allow projects that are ready to move quickly towards completion, as a project developer that is unsure what facilities it seeks to interconnect at the time of its application is clearly not ready to proceed. For these reasons, the requirement that transmission providers study a second generating facility at the same point of interconnection as the initial interconnection request is inconsistent with the Final Rule's stated goals of facilitating a prompt study process that allows ready projects to move forward, making this aspect of the Final Rule internally inconsistent and incoherent and, therefore, arbitrary and capricious. Such internal inconsistency can be grounds for reversal.<sup>90</sup> The Commission should therefore grant rehearing of this aspect of Order No. 2023.

**F. The Commission Erred in Determining that Load Is Responsible for the Costs of Developing, Maintaining, and Posting Heatmaps**

Order No. 2023 states:

[W]e clarify that transmission providers, not interconnection customers, are responsible for paying for costs associated with posting the relevant heatmaps required in *pro forma* LGIP section 6.1. However, we note that, to the extent such costs are properly recoverable in transmission rates consistent with existing Commission accounting and ratemaking policy, such rate treatment is appropriate, and this final rule does not preclude such treatment.<sup>91</sup>

This impact of this determination is that transmission providers must absorb the heatmap costs, but are not barred from seeking to recover them through their transmission rates, to be paid by transmission customers.

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<sup>90</sup> *Constellation*, 45 F.4th at 1057 (finding Commission's reasoning in challenged orders was internally inconsistent, and granting petition for review); *ANR*, 904 F.3d at 1024 (stating FERC's reasoning cannot be internally inconsistent).

<sup>91</sup> Order No. 2023 at P 162.

The Commission should grant rehearing of this aspect of Order No. 2023. Interconnection customers, rather than transmission providers or transmission customers, benefit from heatmap posting so there is no good reason transmission providers must always charge the costs of maintaining and posting heatmaps to transmission service customers as opposed to considering other structures such as fees for prospective developers not yet in the queue to access the heat map. Commission and judicial cost causation principles require that costs should be paid by those who benefit from their incurrence.<sup>92</sup> The Final Rule’s requirement that transmission providers or transmission customers must always be the parties to pay heatmap costs departs from these fundamental principles without explanation, presents free-ridership issues, and would be arbitrary and capricious.<sup>93</sup>

Commissioner Christie noted this issue in his concurring opinion, stating he is concerned about “how the heatmap should be funded.”<sup>94</sup> He went on to state:

Commission policy may dictate that interconnection queue efficiency benefits transmission customers; however, that should not result in the costs of a requirement that best benefits interconnection customers, and really *prospective* interconnection customers that may ultimately not seek to interconnect, being recovered from *consumers* through transmission rates *carte blanche*. The Commission simply cannot ask retail consumers to foot the bill for every single “efficiency,” especially where many of these “efficiencies” largely benefit generation developers and then get folded into transmission rates and receive an ROE.<sup>95</sup>

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<sup>92</sup> *EPE*, slip op. at 8-12, 14; Order No. 1000-A at P 578.

<sup>93</sup> See *Motor Vehicle Manufacturers*, 463 U.S. at 57 (stating an “agency’s view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis” for the change) (citation omitted); *Southwest*, 926 F.3d at 858 (vacating and remanding decision below and stating that while the Commission depart from its prior line of policy, it must acknowledge it is doing so and provide a reasoned explanation for the change); *Panhandle*, 196 F.3d at 1275 (same).

<sup>94</sup> Order No. 2023, concur op. (Commissioner Christie) at P 22.

<sup>95</sup> *Id.* (footnote omitted).

The Commission should take these concerns into account, and grant rehearing of this aspect of Order No. 2023. To do otherwise would set a precedent that transmission providers must absorb or pass on to transmission customers costs that are caused by or that benefit interconnection customers only.

**G. The Commission Erred in Its Apparent Requirement that Transmission Providers Determine Whether a Change in a Project's Point of Interconnection Is a Material Modification**

The Final Rule states that, if an interconnection customer requests to move its point of interconnection in a way that is deemed a material modification and chooses to move forward with the change to its point of interconnection, it will lose its cluster position.<sup>96</sup> The Final Rule also provides that the transmission provider will determine whether a requested point of interconnection change is a material modification.<sup>97</sup>

Although it is not clear from the text of the Final Rule, it appears the Commission requires transmission providers to evaluate whether a change of a project's point of interconnection is a material modification. However, as PJM pointed out in its NOPR comments, there is little ambiguity in the impact, or need to study the materiality, of a change in a project's point of interconnection, yet the Commission would require transmission providers to analyze and apply engineering judgment to each such change.<sup>98</sup> This will take engineering time, which already is in short supply, away from processing interconnection requests and performing cluster studies. Also, most of these changes reflect project developers seeking to optimize their projects in mid-process, rather than performing their due diligence before entering the interconnection process.

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<sup>96</sup> Order No. 2023 at PP 280-81.

<sup>97</sup> *Id.*

<sup>98</sup> PJM Initial Comments at 18.

The Commission should clarify it does not intend transmission providers to have to evaluate each and every request by an interconnection customer to change its point of interconnection to determine that the change would be a material modification and, instead, will allow transmission providers to establish a rule that (1) changes to a project's point of interconnection may be made only at certain defined points in the cluster cycle; and (2) outside of those defined times within the cluster cycle a change in the point of interconnection is presumed to be a material modification.<sup>99</sup>

To the extent the Commission does not so clarify, PJM requests rehearing of this element of the Final Rule. Requiring transmission providers to evaluate every request to move a project's point of interconnection to determine whether it is a material modification would be arbitrary and capricious, because it would mean the Commission failed to provide a meaningful response to the arguments raised by commenters and did not provide a satisfactory explanation for the findings it had made.

#### **H. The Commission Erred in Requiring Transmission Providers to Evaluate Certain Grid-Enhancing Technologies and Report on the Evaluation in Its Cluster Study Reports**

The Final Rule requires transmission providers to evaluate certain GETs in its interconnection studies and include in its cluster study reports an explanation as to how it evaluated these technologies in its studies and why it chose to utilize them or not.<sup>100</sup> This requirement adds yet another administrative burden for transmission providers trying to process and study interconnection requests in a timely fashion under threat of penalties.

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<sup>99</sup> The IPRTF Tariff allows an interconnection customer to move its point of interconnection in limited circumstances prior to the close of Decision Point I. Tariff, Part VII, Subpart D, section 309(B)(4)(a) and Part VIII, Subpart C, section 406(B)(4)(a). Providing developers a list of what changes are automatically acceptable at each decision point requires no study on the part of the RTO, does not distract from completion of cluster studies, and gives certainty to developers as to what they can and cannot change with their project.

<sup>100</sup> Order No. 2023 at P 1581.

Worse, for PJM there is no benefit in return for the additional burden and time required, because all of the enumerated GETs already are studies in the course of interconnection studies in the PJM region. There is nothing about these particular technologies that requires special study protocols or separate reporting.<sup>101</sup>

PJM therefore requests clarification that the Final Rule's GETs reporting obligation does not apply when a transmission provider already includes all of the enumerated technologies in its studies.

Apart from the reporting obligation, PJM is concerned that the GETs requirement may become an extraordinary burden because there are no limits on what interconnection customers may request and no cost to them for proposing multiple GETs regardless of their merit or feasibility. With no limits on proposing GETs, interconnection customers undoubtedly will ask for evaluation of a wide range of GETs that have little or no merit. Interconnection customers also are likely to demand re-evaluation of technologies that do not perform as intended, are incompatible with the PJM system, or are otherwise unreliable in the hope that their suggested technology(ies) will lower the costs of the upgrades required by interconnection of their project.

## **V. REQUEST FOR POSTPONEMENT OF THE COMPLIANCE FILING DEADLINE**

PJM supports the motion being filed contemporaneously by PJM, MISO and SPP requesting extension of the compliance filing deadline for Order No. 2023, currently set at 90 days after the Final Rule is published in the *Federal Register*, given the need for

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<sup>101</sup> Moreover, at this point in time, GETs' applications are limited and are evaluated by host transmission owners. GETs are not a substitute for transmission capability and more industry education as to their application is needed because GETs introduce another layer of risk due to additional cyber security attack vectors and reliability relay protection and control coordination risks.

additional clarification and disposition of issues on rehearing. Changing the compliance filing to 90 days after the Commission issues an order on clarification and rehearing as requested herein would be consistent with Commission precedent<sup>102</sup> and would avoid PJM having to finalize its compliance filing while there are rehearing and clarification issues pending before the Commission that could fundamentally change PJM's compliance filing and while PJM is engaged in its transition to the IPRTF Tariff's reformed interconnection process.

PJM recently commenced the Transition Period that will lead to PJM's new interconnection process under the IPRTF Tariff. At present, PJM is processing over 725 interconnection requests in the first phase of the Transition Period. Requiring PJM to make its Order No. 2023 compliance filing with the uncertainty caused by pending requests for rehearing and clarification and then potentially have to make a second compliance filing to account for changes required by the order on rehearing and clarification, all while working to transition to its approved new interconnection process, would interfere with PJM's Commission-approved transition process. The Final Rule explicitly states that its provisions "are not intended to interfere with the timely completion of . . . in-progress cluster studies and transition processes."<sup>103</sup>

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<sup>102</sup> See Order No. 845-A at P 161 (noting the Commission changed the compliance filing deadline for Order No. 845 to ninety (90) days after the Commission's issuance of Order No. 845-A, which addressed the pending requests for rehearing of Order No. 845); see also Notice of Extension of Compliance Date, Docket Nos. RM17-8-000, -001 (Oct. 3, 2018) (granting the request of Edison Electric Institute to extend the compliance date for Order No. 845 to 90 days after the issuance of an order addressing the pending requests for rehearing where Edison Electric argued the "additional time would help to ensure that all transmission providers have the opportunity to effectively comply with Order No. 845").

<sup>103</sup> Order No. 2023 at P 861.

PJM therefore requests postponement of the compliance deadline so that the 90-day clock would start upon issuance of an order on rehearing and clarification in this docket.

## **VI. CONCLUSION**

For the reasons stated herein, PJM respectfully requests that the Commission grant rehearing and provide a clear rebuttable presumption that ongoing, approved interconnection reform packages such as the IPRTF Tariff meet the Final Rule's compliance requirements. Should the Commission deny this request, PJM requests that the Commission provide clarification that its review of ongoing, approved interconnection reform packages such as the IPRTF Tariff on compliance will be based on whether the package, as a whole, advances the goals of the Final Rule without inviting re-argument on every aspect of the interconnection reform package and its consistency on a line by line basis with the highly prescriptive Final Rule. The Commission needs to send this clear signal and direction in its order on rehearing so as to avoid creating a period of uncertainty as to the sustainability of the reforms that are presently underway and received strong stakeholder support and unanimous Commission support. In short, after considerable work and stakeholder compromise the interconnection process approved as the IPRTF Tariff is moving forward to address the present interconnection request backlog. It would be wholly unworkable and contrary to reasoned decision making for the Commission to impose a host of mid-flight revisions to the IPRTF Tariff while the carefully crafted process is ongoing. It is important that the Commission make its intentions clear now through its order on rehearing rather than creating months of uncertainty while compliance filings are pending. Due recognition of the considerable work and support on interconnection reforms that has been achieved in PJM requires no less.



In addition, for the reasons stated herein, the Commission should grant rehearing of its proposed penalty regime as that proposal raises a host of legal and practical issues as detailed herein. Finally, PJM requests that the Commission consider the other requests for rehearing and clarification set forth herein.

Respectfully submitted,

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***Counsel for  
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Dated: August 28, 2023

**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 28th day of August 2023.

/s/ David S. Berman  
David S. Berman