UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	Docket Nos. ER22-2931-000
	)	EL24-26-000
	)	(consolidated)

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

PJM Interconnection, L.L.C. ("PJM"), pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission ("Commission") Rules of Practice and Procedure,[1] respectfully submits this Answer to the Answer and Motion for Summary Disposition of Leeward Renewable Energy, LLC and Vesper Energy Development LLC ("PJM Developers") filed April 12, 2024 in the above-referenced dockets.[2] PJM also submits a Motion for Leave to Answer and Answer to the Answers of Copenhagen Infrastructure Partners Inc. ("CIP") and Enbridge Holdings (Green Energy) L.L.C. ("Enbridge")[3] filed in response to PJM's April 2, 2024, motion for continued abeyance in the above-referenced dockets.[4]

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[1] 18 C.F.R. §§ 385.212, 385.213.

[2] *PJM Interconnection, L.L.C.*, Answer and Motion for Summary Disposition of Leeward Renewable Energy, LLC and Vesper Energy Development LLC, Docket Nos. EL24-26-000 & ER23-2931-000 (Apr. 12, 2024) ("PJM Developers' Motion").

[3] *PJM Interconnection, L.L.C.*, Copenhagen Infrastructure Partners Inc.'s Answer to the Motion for Abeyance by PJM Interconnection, L.L.C., Docket Nos. EL24-26-000 & ER23-2931-000(Apr. 17, 2024) ("CIP Answer"); *PJM Interconnection, L.L.C.*, Motion to Intervene of Enbridge Holdings (Green Energy) L.L.C. and Answer to Motion for Abeyance, Docket Nos. EL24-26-000 & ER22-2931-000 (Apr. 17, 2024) ("Enbridge Answer").

[4] *PJM Interconnection, L.L.C.*, Motion to Hold Section 206 Proceeding in Continued Abeyance of PJM Interconnection, L.L.C., Docket Nos. EL24-26-000 & ER22-2931-000 (Apr. 2, 2024) ("April 2 Abeyance Motion").

As demonstrated herein, the PJM Developers' Motion mischaracterizes both the historical land rights obligations under the PJM Open Access Transmission Tariff ("Tariff") and the future applicability of any changes to the Tariff provision at issue in this proceeding. For the reasons discussed herein, the PJM Developers' Motion should be denied.

As discussed below, in contemplating how to address the concerns set forth in the December 20 Order, PJM has determined a two-pronged approach would be necessary. On one hand, PJM is willing to modify the language in Tariff, Attachment P, Appendix 2, section 5.3 to resolve the issue of whether the *pro forma* Interconnection Construction Service Agreement ("ICSA") is just and reasonable and not unduly discriminatory or preferential.[5] The proposed changes would result in the language of section 5.3 of the *pro forma* ICSA more closely following the language of the Commission's pro forma Large Generation Interconnection Agreement ("LGIA") and, thus, clarifying responsibility for acquiring third party land rights consistent with provisions that the Commission has previously accepted as just and reasonable in compliance with Order No. 2003.[6]

On the other hand, and although PJM believes that the concerns raised in the Commission's December 20 Order are largely addressed by the Site Control provisions under its new interconnection rules,[7] PJM has identified targeted changes to Parts VII,

[5] *PJM Interconnection, L.L.C.*, 185 FERC ¶ 61,202, at P 41 (2023) ("December 20 Order").

[6] *See N.Y. Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,159, at P 135 (2004) ("*NYISO*") (finding New York Independent System Operator, Inc. satisfied the independent entity variation standard with respect to third party land rights).

[7] December 20 Order at P 41 (directing PJM to "either (1) show cause as to why its *pro forma* ICSA under its Tariff is just and reasonable and not unduly discriminatory or preferential; or (2) explain what changes to its Tariff it believes would remedy the identified concerns if the Commission were to determine that the

VIII, and IX of the Tariff that would provide clarification to both Project Developers and Transmission Owners in the event an unanticipated, late-stage brownfield expansion scenario were to arise, as it did for the New Market Solar project. In both instances, the proposed changes would apply *prospectively* to any ICSA tendered for execution under Part VI or Generation Interconnection Agreement ("GIA") or stand-alone Construction Service Agreement ("CSA") tendered for execution under Part IX following Commission action on PJM's proposals.[8] This approach will provide Project Developers with greater ability to assess their potential project costs, both at the time of initial Application and during key decision points in the new interconnection process.

For the reasons set forth below, the Commission should deny the PJM Developers' Motion and grant PJM's motion for continued abeyance. In the alternative, the Commission should issue an order under section 206 of the Federal Power Act ("FPA") directing PJM to file Tariff changes described herein to address the issue set forth in the December 20 Order.

I. MOTION FOR LEAVE TO ANSWER

PJM submits this Answer to PJM Developers' Motion as a matter of right,[9] and respectfully requests that the Commission accept its motion for leave to answer and answer the CIP Answer and Enbridge Answer. While an answer to an answer is not a matter of right under the Commission's regulations,[10] the Commission routinely permits

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Tariff has, in fact, become unjust and unreasonable or unduly discriminatory or preferential and, therefore, were to proceed to establish a replacement Tariff").

[8] PJM anticipates that there are very limited circumstances under which the *pro forma* ICSA at issue in the New Market Solar proceeding (Docket No. ER22-2931) and the show cause proceeding (Docket No. EL24-26-000) would be utilized in the future.

[9] 18 C.F.R. § 385.213(a).

[10] 18 C.F.R. § 385.213(a)(2).

such answers when the answer provides useful and relevant information that will assist the Commission in its decision-making process,[11] assures a complete record in the proceeding,[12] and provides information helpful to the disposition of an issue.[13] This answer satisfies these criteria, and PJM therefore respectfully requests that the Commission accept this answer to the CIP Answer and Enbridge Answer.

II. ANSWER

A. The PJM Developers Ignore the Changes to the Tariff Since Order No. 2003.

The PJM Developers' Motion is based on the erroneous premise that the "nature of the obligations imposed by PJM's tariff has not fundamentally changed since PJM submitted its Order No. 2003 compliance filing." The PJM Developers' Motion further states, "the obligation to construct network upgrades includes the obligation to acquire any property interests or rights-of-way owned or controlled by third parties that are necessary to construct facilities. This was true at the time of PJM's Order No. 2003 compliance filing and remains true today."[14] The PJM Developers' position, however, ignores the changes to PJM's Site Control rules under its reformed interconnection process.

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

[12] *See, e.g.*, *Pac. Interstate Transmission Co.*, 85 FERC ¶ 61,378, at 62,443 (1998), *order on reh'g*, 89 FERC ¶ 61,246 (1999); *see also Morgan Stanley Cap. Grp., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017, at 61,036 (2000) (accepting an answer that was "helpful in the development of the record").

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

[14] PJM Developers Motion at 4-5.

To meaningfully respond to the Commission's December 20 Order, it is important to appreciate the changes to PJM's interconnection rules that have occurred since the underlying docket involving New Market Solar commenced in September 2022. The New Market Solar proceeding at Docket No. ER22-2931-000 involved the *pro forma* ICSA for projects studied under the interconnection rules set forth in Tariff, Part VI. In November 2022, two months after the New Market Solar proceeding commenced, the Commission issued the order accepting PJM's interconnection process reforms, which included new Site Control rules for which the Commission granted PJM an independent entity variation to depart from Order No. 2003.[15]

On July 10, 2023, PJM achieved its Transition Date, which represents the date on which all New Service Requests with queue positions of AD2 and earlier had executed their respective PJM services agreements (such as the CIP project referenced in the PJM Developers Motion[16]), or had requested that PJM file their agreements unexecuted with the Commission.[17] In the current (i.e., post-Transition Date) era, projects in the queue are subject to the interconnection process set forth in Parts VII and VIII of the Tariff, and will execute service agreements based on the pro forma templates in Part IX.[18] Approximately six months after PJM's began its transition to the new interconnection rules, the Commission issued the December 20 Order, which focused on the *pro forma* ICSA found in Part VI of the Tariff and utilized for projects that had been studied

[15] *See PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,162, at P 100 (2022), *order on reh'g*, 184 FERC ¶ 61,006 (2023); *id.* at P 33 ("[T]o the extent PJM's proposed reforms reflect deviations from the Commission's pro forma LGIA and LGIP, we find that they satisfy the independent entity variation standard of Order No. 2003.").

[16] PJM Developers' Motion at 5.

[17] *See* Tariff, Part VII, Subpart A, section 300 (Definition of Transition Date).

[18] *See supra* note 8.

pursuant to PJM's pre-Transition Date interconnection rules. Contrary to the PJM Developers' contention, and as detailed below, PJM's Tariff provisions governing the acquisition of land rights have changed since the issuance of Order No. 2003.

The Commission should reject the PJM Developers' Motion. First, the PJM Developers' characterization of land rights acquisition obligations under Tariff, Attachment P is erroneous. The *pro forma* ICSA does not, in fact "impos[e] the obligation for acquiring property rights for network upgrades and transmission owner interconnection facilities on transmission owners."[19] Instead, as PJM explained in its Order No. 2003 compliance filing, the Tariff requires transmission owners "to exercise any rights of eminent domain they may have, *to the same extent they would do so on their own behalf*," in order to fulfill their obligation to acquire property rights necessary to construct, operate, and maintain Transmission Owner Interconnection Facilities.[20] The Commission accepted this interpretation as just and reasonable.[21] Rather than strictly adopt the land acquisition requirements set forth in section 5.13 of the *pro forma* LGIA, PJM's interpretation, which imposes land rights acquisition obligations on a Transmission Owner *to the extent* that they use their power of eminent domain on their own behalf, constitutes an independent entity variation from Order No. 2003.[22]

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[19] PJM Developers' Motion at 4.

[20] *PJM Interconnection, L.L.C.*, Answer of PJM Interconnection, L.L.C., Docket No. ER04-457-002, at 8 (Sept. 14, 2004) (emphasis added). PJM cautions that the use of eminent domain for the private purpose of interconnecting a single generator may not constitute a public purpose, and thus may raise federal takings issues; such issues may not be mitigated by the state-provided authority limitation or the comparable-treatment of-affiliates limitation (because in some cases the affiliate may be a state-regulated public utility and it is the public use versus private use distinction that matters for constitutional takings).

[21] *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,099, at P 6 (2005).

[22] *See id*. (noting that PJM's explanation of its interpretation of its Tariff requirements "resolves . . . concern[s] [regarding] whether a transmission owner must exercise its power of eminent domain on behalf of an interconnection customer if it is necessary to complete the interconnection").

Second, PJM Developers' misguided argument that "the nature of the obligations imposed by PJM's tariff has not fundamentally changed since PJM submitted its Order No. 2003 compliance filing"[23] is irrelevant to the question of which party should be responsible for acquiring land rights under the new interconnection rules set forth in Parts VII and VIII of the Tariff. As previously noted in this proceeding, PJM is in the process of transitioning to its comprehensively reformed interconnection process designed to more efficiently and timely process New Service Requests by transitioning from a serial first-come, first-served queue process to a first-ready, first-served clustered cycle approach.[24] The PJM Developers' Motion, however, makes no mention of this transition and ignores the that responsibility for acquisition of land rights are largely addressed by the Site Control provisions under PJM's new interconnection rules. Despite the difference between the pre- and post-Transition Date interconnection rules, PJM Developers would have the Commission simply mandate the adoption of *pro forma* language in the Tariff. Simply mandating that PJM adopt the land rights requirements of the *pro forma* LGIA, as the PJM Developers inappropriately would have the Commission do, would contravene the goals of comprehensive queue reform and ignore the FERC-approved changes under the new interconnection rules. PJM respectfully urges the Commission to reject such a request because it utterly disregards the FERC-approved changes.

Finally, to the extent the Commission agrees that the targeted changes PJM describes below are deemed necessary, then any such changes must align with the new

[23] *Id.* at 4.

[24] As outlined below, PJM has determined that the best way to grapple with responsibility for land rights acquisition under this new regime is to align those obligations with demonstrations of Site Control.

interconnection process, including the Site Control rules, and apply only prospectively to any agreements tendered and signed by parties in the future.[25]

B. Response to Show Cause Directive

To address the concerns set forth in the December 20 Order, a two-pronged approach would be necessary. First, PJM would modify Tariff, Attachment P, Appendix 2, section 5.3 of the *pro forma* ICSA to more closely following the language of the Commission's *pro forma* LGIA and, thus, clarify responsibility for acquiring third party land rights consistent with similar provisions that the Commission has previously accepted as just and reasonable in compliance with Order No. 2003. Next, although PJM believes that the concerns raised in the December 20 Order are largely addressed by the Site Control provisions under PJM's new interconnection rules, PJM has identified targeted changes to Parts VII, VIII, and IX of the Tariff that would provide clarification to both Project Developers and Transmission Owners in the event a "New Market Solar" scenario arose. In both instances, the proposed changes would apply prospectively to any ICSA tendered under Part VI or any GIA or stand-alone CSA tendered under Part IX following Commission action on PJM's proposals.

1. Revisions to Pro Forma ICSA in Tariff, Attachment P.

In the December 20 Order, the Commission directed PJM to "explain what changes to its Tariff it believes would remedy the identified concerns if the Commission were to determine that the Tariff has, in fact, become unjust and unreasonable or unduly discriminatory or preferential and, therefore, were to proceed to establish a replacement

[25] PJM clarifies that such prospective changes would not be applied retroactively to executed service agreements. *Cf.* CIP Answer at 3 (requesting that the Commission provide relief for "existing" customers (i.e., Interconnection Customers with executed service agreements)).

Tariff."[26] In order to address this issue and clarify responsibility for obtaining third party land rights under the *pro forma* ICSA set forth in Tariff, Part VI, PJM proposes, subject to the Commission's directive, to revise the language of section 5.3 in a manner that the Commission has previously determined is just and reasonable in compliance with Order No. 2003.[27] Specifically, PJM proposes to revise Tariff, Attachment P, Appendix 2, section 5.3 to state as follows:

> If any part of the Transmission Owner Interconnection Facilities and/or Network Upgrades is to be installed on property owned or controlled by persons other than Interconnection Customer or Interconnected Transmission Owner, the Interconnected Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such person any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner Interconnection Facilities and/or Network Upgrades upon such property.

This proposed revision will align the *pro forma* ICSA under Part VI of the Tariff with the requirements of Order No. 2003 and resolves the Commission's concern that the "*pro forma* ICSA is silent . . . as to acquiring land from a third party, which may create an unjust and unreasonable result for interconnection customers."[28]

2. Prospective Revisions to Tariff, Parts VII, VIII and IX.

The concerns raised in the Commission's December 20 Order are largely addressed by the Site Control provisions under PJM's new interconnection rules. PJM, however, has identified targeted changes to Parts VII, VIII, and IX of the Tariff that

[26] December 20 Order at P 41.

[27] *See NYISO* at P 135.

[28] December 20 Order at P 41.

would provide clarification to both Project Developers and Transmission Owners in the event a "New Market Solar" scenario arose.

a. Existing Site Control requirements under the Tariff

Under PJM's new interconnection rules set forth in Tariff, Parts VII and VIII, a Project Developer is responsible for obtaining Site Control from its Generating Facility to the Point of Interconnection including in circumstances where the path to the Point of Interconnection crosses over third party land or where the Generating Facility requires a new substation.[29] After evaluating the Site Control requirements in light of the December 20 Order, PJM determined that its requirements may not be sufficiently clear as to responsibility for securing third party land rights in instances where an interconnection requires expansion of Transmission Owner's existing Interconnection Facilities or substation. PJM also concluded that the same clarifications it proposes to make to the *pro forma* ICSA in this proceeding must be addressed in the *pro forma* GIA to ensure consistency and transparency across service agreements under the Tariff. This review and identification of potential solutions under both the pre- and post-Transition Date interconnection rules underpin PJM's request for continued abeyance.[30] Any changes to Parts VII, VIII, and IX of the Tariff must be applied to New Service Requests on a forward-looking basis.[31]

[29] *See* Tariff, Part VII, Subpart C, section 306(B)(5); Tariff, Part VIII, Subpart B, section 403(B)(5) (requiring demonstration of Site Control at the time of application for "100 percent of the Generating Facility Site including the location of the high-voltage side of the Generating Facility's main power transformer").

[30] April 2 Abeyance Motion at 3-4.

[31] Notwithstanding CIP's insistence that it is "not requesting retroactive relief in this proceeding," CIP Answer at 3 n.9, PJM reiterates that all clarifications to the Tariff resulting from this FPA section 206 proceeding will be applied *prospectively* to service agreements that have not yet been executed and filed with or reported to the Commission.

b. Proposal to Address Acquisition of Land Rights.

PJM proposes several clarifications to Parts VII, VIII and IX of the Tariff to align third party land rights obligations with demonstrations of Site Control and to ensure transparency for Project Developers to assess the risk of potential land acquisitions to interconnect their Generating Facilities.

As discussed above, the new interconnection process requires Project Developers to acquire Site Control from the Generating Facility to the Point of Interconnection, including Site Control over third party land required for "greenfield" substations. However, during the Facilities Studies phase, a Transmission Owner may identify the need to expand its existing Interconnection Facilities or substation to accommodate the interconnection of a proposed generating facility and such expansion may require the acquisition of additional land or land rights.

If the Facilities Study reveals that additional land is required to accommodate an expansion of an existing substation or Interconnection Facilities required for a project ("brownfield expansion"), PJM proposes that the Transmission Owner be responsible for acquiring the parcel land or land rights associated with that brownfield expansion. The Project Developer would then reimburse the Transmission Owner for all the costs related to the land or land rights acquisitions as a condition of its GIA.[32] In short, land or other land rights contemplated under this proposal would include both brownfield expansion of Transmission Owner Interconnection Facilities and Interconnection Switchyards.[33]

[32] *See, e.g.*, December 20 Order at P 38 (noting that Order No. 2003 requires Transmission Owners to procure land rights necessary to construct Network Upgrades "at the interconnection customer's expense").

[33] Although less common, in the event of the need to modify an existing line, the same rules would apply.

Finally, PJM would also modify the third-party land rights language in section 23.3.3 of the *pro forma* GIA in the same manner as section 5.3 of the ICSA, as described in section II(B)(1), *supra*.

Each of these proposed clarifications will provide Project Developers with greater ability to assess their potential project costs, both at the time of Application and up through Decision Point III, while also eliminating potential ambiguities as to the party responsible to obtain land on behalf of the Project Developer.

III. CONCLUSION

For the reasons set forth above, the Commission should deny the PJM Developers' Motion and grant PJM's requested continued abeyance.

Respectfully submitted,

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April 29, 2024

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 29th day of April 2024.

/s/ Elizabeth P. Trinkle

Attorney for PJM Interconnection, L.L.C.