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January 22, 2020

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20426-0001

Re: PJM Interconnection, L.L.C., Docket No. ER19-2915-001

Dear Secretary Bose:

PJM Interconnection, L.L.C. (“PJM”) submits this response to the Federal Energy Regulatory Commission’s (“Commission”) December 23, 2019 deficiency letter.¹ PJM appreciates the opportunity to respond to the Commission’s questions about the stakeholder-proposed amendments (“stakeholder proposal”) to revise the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), Schedule 6, sections 1.5.8(c)(2) and 1.5.8(e).²

Regardless of the outcome in this docket, when assessing a proposal’s cost-effectiveness under the PJM competitive planning process, PJM already considers, and will continue to consider, cost commitment provisions included in project proposals.³ Although a project proposal’s ability to address the identified planning need is the primary factor in PJM’s competitive planning decisional calculus, PJM appropriately considers cost commitments and the associated benefits to consumers. The subject stakeholder proposal is intended to advance the consideration of cost caps

¹ *PJM Interconnection, L.L.C.*, Deficiency Letter, Docket No. ER19-2915 (Dec. 23, 2019) (“Deficiency Letter”).

² As previously noted, the stakeholder proposal is the product of stakeholder drafted motions and friendly amendments initiated at PJM’s senior Markets and Reliability Committee.

³ *See* Operating Agreement, Schedule 6, section 1.5.8(c)(2)(vii) (currently permits developers to demonstrate “other advantages the entity may have to construct, operate, and maintain the proposed project, including any cost commitment the entity may wish to submit”).

and thus benefit consumers.

PJM supports the ability of developers to submit cost commitment proposals and the general aim of the stakeholder proposal, but recognizes the concern that the stakeholder proposal as drafted could lead to implementation issues that could diminish the benefits and efficiencies of cost commitment provisions. Nevertheless, PJM could and will implement the stakeholder proposal (just as it has implemented its current Operating Agreement language regarding cost commitment). PJM believes that it will be able to continue to deliver the consumer benefits and economic efficiencies of cost commitments, even if developers have the flexibility to specify exceptions, contingencies, and conditions in cost commitments, as well as varying levels of commitments.

I. BACKGROUND

As PJM's transmittal letter⁴ explained, the stakeholder proposal seeks to revise sections of Schedule 6 of the Operating Agreement that describe aspects of PJM's Regional Transmission Expansion Plan ("RTEP")⁵ development procedure⁶ which involves, among other things, PJM's initiation of project proposal windows.⁷ The Operating Agreement requires proposals submitted in such windows to contain certain information including, among other things, relevant engineering studies, a proposed initial construction schedule, and cost estimates that provide sufficient detail for PJM to review and analyze the proposed cost of the project proposal.⁸

⁴ *PJM Interconnection, L.L.C.*, Transmittal Letter, Docket No. ER19-2915-000 (Sept. 30, 2019) ("transmittal letter").

⁵ Capitalized terms used and not otherwise defined herein have the Operating Agreement definition of the term.

⁶ See generally Operating Agreement, Schedule 6, section 1.5.8.

⁷ See Operating Agreement, Schedule 6, section 1.5.8(c).

⁸ See Operating Agreement, Schedule 6, section 1.5.8(c)(1).

Moreover, proposals submitted in proposal windows from all entities (both existing Transmission Owners and Nonincumbent Developers) that indicate the entity intends to be a Designated Entity also must contain information to the extent not previously provided pursuant to the Operating Agreement's pre-qualification process.⁹ The Operating Agreement contemplates such proposer's submission of "other advantages the entity may have to construct, operate, and maintain the proposed project, including any cost commitment the entity may wish to submit."¹⁰

After a proposal window closes, PJM reviews the submitted proposals and presents to the Transmission Expansion Advisory Committee ("TEAC") the proposals that merit further consideration for inclusion in the recommended plan. In making a determination, PJM weighs multiple factors including projects costs and any cost commitment when deciding what projects to recommend to the PJM Board of Managers ("PJM Board") for inclusion in the RTEP. Specifically, PJM is obliged to consider the criteria set forth in the Operating Agreement, Schedule 6, sections 1.5.8(e), including: (1) the extent to which a Short-term Project proposal or Long-lead Project proposal would address and solve a posted violation, system condition, or economic constraint; (2) if an economic project, the extent to which the relative benefits of the project proposal meet a Benefit/Cost Ratio Threshold of at least 1.25:1 as calculated pursuant to the Operating Agreement, Schedule 6, section 1.5.7(d); (3) the extent to which the Short-term Project proposal or Long-lead Project proposal would have secondary benefits, such as addressing additional or other system reliability, operational performance, economic efficiency issues or federal Public Policy Requirements or state Public Policy Requirements identified by the states in the PJM Region; and

⁹ See Operating Agreement, Schedule 6, section 1.5.8(a).

¹⁰ See Operating Agreement, Schedule 6, section 1.5.8(c)(2) (emphasis added). To be clear, this is the cost commitment language that already exists in the Operating Agreement.

(4) other factors such as cost-effectiveness,¹¹ the ability to timely complete the project, and project development feasibility.¹²

Section 1.5.8(f) further specifies entity-specific criteria that PJM considers in determining the Designated Entity for the proposed project, including whether the entity is pre-qualified to be a Designated Entity and evidence of an entity's ability to secure a financial commitment from an approved financial institution agreeing to finance the construction, operation, and maintenance of a project if accepted into the recommended plan.¹³

II. RESPONSE TO DEFICIENCY LETTER

PJM now addresses the Deficiency Letter's important policy and practical questions.

DEFICIENCY LETTER QUESTION 1.A:

1. **In proposed revisions to sections 1.5.8(c)(2) and 1.5.8(e) of Schedule 6 of the Operating Agreement, PJM proposes to clarify that any voluntary cost commitment provision submitted as part of a proposal would be “binding.” In section 1.5.8(c)(2), PJM proposes that “[t]o the extent that an entity submits a cost containment proposal the entity shall submit sufficient information for the Office of Interconnection to determine the binding nature of the proposal with respect to critical elements of project development.”**
 - a. **Please explain how PJM would memorialize a binding voluntary cost commitment included in a proposal selected by PJM for inclusion in the Regional Transmission Expansion Plan (RTEP). Please provide all relevant sections in the PJM Open Access Transmission Tariff (Tariff), Operating Agreement, manuals, and/or other relevant agreements or documents to support your response.**

¹¹ Containing costs through, for example, a cost commitment provision is one factor that contributes to a project's cost-effectiveness.

¹² Operating Agreement, Schedule 6, sections 1.5.8(e) and 1.5.8(f).

¹³ See Operating Agreement, Schedule 6, section 1.5.8(f). Other section 1.5.8(f) criteria include: information provided in the proposing entity's submission relative to the specific proposed project that demonstrates: (i) the technical and engineering experience of the entity, including its record regarding construction, maintenance, and operation of transmission facilities; (ii) ability of the entity or its affiliate, partner, or parent company to construct, maintain, and operate transmission facilities; and (iii) capability of the entity to adhere to standardized construction, maintenance, and operating practices, including the emergency response and restoration of damaged equipment. Section 1.5.8(f) also allows for consideration of any other factors that may be relevant to the proposed project.

PJM RESPONSE:

PJM would memorialize a developer's assertion of a "binding voluntary cost commitment" in Schedule E for non-conforming terms and conditions in the *pro forma* Designated Entity Agreement ("DEA") filed with the Commission.¹⁴

If a DEA contains non-conforming terms and conditions, PJM, as the transmission provider, would file the executed agreement with the Commission. The Commission would then determine whether the developer's "binding voluntary cost commitment" is just and reasonable.¹⁵ To be clear, PJM as the regional transmission organization ("RTO") does not have the authority to function as the rate regulator with regard to any developer's asserted "binding voluntary cost commitment."¹⁶

Although developers are required to provide updates on the status of their projects including their costs, the policing of a developer's asserted "binding voluntary cost commitment" is a rate matter between the developer, the ratepayers (through the complaint process, a protest to

¹⁴ See Open Access Transmission Tariff ("Tariff"), Attachment KK, Schedule E, and PJM Manual 14F: Competitive Planning Process, Revision 3 (effective April 25, 2019) ("Manual 14F"), section 8.1.5, at 39-40.

¹⁵ See *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,054 at P 27 (Jan. 29, 2016) ("The issue before the Commission in the instant proceeding is whether the [DEA] providing for the development and construction of the Project is just and reasonable.").

¹⁶ *PJM Interconnection, L.L.C.*, Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C., Docket No. ER19-2915-000 at 3-4 (Nov. 5, 2019) ("PJM Answer to Comments and Protests") ("[T]he existing Operating Agreement language, the [PJM transmittal letter in this docket], and the stakeholder proposal do not suggest that PJM is now, or intends in the future if the stakeholder proposal is approved, . . . to act as the rate regulator."); *Competitive Transmission Development Technical Conference*, Pre-Technical Conference Comments of PJM, Docket No. AD16-18-000 at 3 (Mar. 24, 2016) ("PJM Pre-Technical Conference Comments"), ("RTOs are not regulatory authorities nor construction managers. Nor do RTOs have an ongoing enforcement arm."); see also *Competitive Transmission Development Technical Conference*, Written Testimony of Craig Glazer, Docket No. AD16-18-000 at 6 n. 4 (June 22, 2016) (describing "a possible Commission directive to the RTO to somehow lay out and tariff the criteria it will evaluate in reviewing cost cap proposals" as being "an unworkable shifting of regulatory responsibility from the Commission to the RTO"); Testimony of Craig Glazer, June 27 Transcript, at 33 ("there is a giant 'who decides' question" when it comes to cost commitment questions).

a rate filing, or otherwise), and the Commission.¹⁷ PJM's Manual 14F tracks PJM's understanding of this division between the Commission's role (to engage in a prudency review and enforce a proffered cost commitment) and PJM's role (to provide information).¹⁸

DEFICIENCY LETTER QUESTION 1.B:

- b. Please explain whether there are minimum characteristics established by PJM for a cost commitment proposal to be “binding.” Please provide all relevant sections in the Tariff, Operating Agreement, manuals, and/or other relevant agreements or documents to support your response.**

PJM RESPONSE:

PJM has established no minimum characteristics for a voluntarily submitted cost commitment proposal to be “binding” and, thus, no relevant documents exist.

By way of further response, under the stakeholder proposal, the term “binding” is not defined. The stakeholder proposal empowers the developer submitting the cost commitment provision to define for itself (and ultimately PJM in assessing the proposal) what “binding” means for purposes of its particular project proposal.

The stakeholder proposal allows a developer flexibility when submitting a cost

¹⁷ *Competitive Transmission Development Technical Conference*, Written Testimony of Craig Glazer, Docket No. AD16-18-000 at 8 (June 22, 2016) (“PJM has no problem requiring the developer to report to stakeholders its ongoing costs of the project or any particular challenges the developer is facing, including the impact of those factors on the project budget and the cost cap. And, although the RTO can serve as a vehicle for posting of that information and for hosting an explanation by the developer to the stakeholders through the RTO[']s stakeholder process, the actual enforcement of the cost cap must come through the regulatory process by way of the filing of a complaint by load or a state public utility commission or examination of those cost overruns through the formula rate process.”).

¹⁸ Manual 14F, section 8.1.5 (noting that if a developer who is a Designated Entity has committed to cost commitment measures, the following language must be included in the Designated Entity Agreement: “The Designated Entity shall notify PJM in writing within a reasonable time after the Designated Entity becomes aware of a condition that would result in (i) the cost commitment being exceeded or (ii) triggering any exclusions to the cost commitment. PJM, in turn, will communicate such information to stakeholders via notice posted on PJM’s website and to FERC by written notice.”).

commitment and appears to suggest a preservation of Section 205 of the Federal Power Act rights, not only in the submission of the DEA (and the included cost commitment), but possibly in revisions to the DEA (and the included cost commitment). This language is appropriate and consistent with the entire approach of the stakeholder proposal, namely to allow for innovative commitments on the part of developers rather than developing rules that work to ‘pre-judge’ what constitutes appropriate commitments.

To be clear, a binding cost commitment could in fact include exceptions, contingencies, and conditions, as well as the right to seek changes in rate under certain specified circumstances. Generally speaking, PJM does not contemplate that an unqualified reservation of Section 205 rights would constitute a meaningful cost commitment, although even then there may be certain specific elements of a cost commitment proposal – such as specific line items – that are, in fact, part of a “binding” cost commitment (e.g., a commitment for the cost of steel or for a specific piece of equipment or a cap on the return on equity over the life of the project). Under the stakeholder proposal as written, a developer could still proffer to restrict or limit its Section 205 rights in making a cost commitment (with whatever exceptions, contingencies, and conditions the developer wishes to include). For example, a developer may wish to reserve the right to seek changes for events of force majeure or other circumstances that could not be reasonably foreseen. PJM does not believe the stakeholder proposal intended to foreclose developers from proffering such limitations, or exceptions to such limitations. In PJM’s view, the absence of such limitations or exceptions on cost commitment provisions, although potentially desirable from an implementation and future litigation viewpoint, should not render the stakeholder proposal facially unjust and unreasonable under the Section 205 standard of review.

In assessing any cost commitment, PJM would expect to evaluate issues like the ones that follow:

- **Are there any exceptions, contingencies, or conditions attached to all or parts of a cost commitment provision?** As PJM has previously articulated, when assessing a developer’s assertion of a binding voluntary cost commitment, “the devil is in the details.”¹⁹ Others have accurately noted that “[t]he value of cost caps with significant headroom or ‘outs’, e.g., the ability to nullify the cap or adjust the cap upwards if certain events occur, is questionable.”²⁰ At present, the stakeholder proposal is silent about cost commitment proposals’ exceptions, contingencies, or conditions – and thus provides no clarity for how such carve-outs should be presented. PJM could well be faced with having to assess the comparative risks and benefits of competing carve outs – for example, “right of way acquisition costs” for one project as compared to “environmental permitting” costs for another.
- **What elements of a project proposal should be included in the cost commitment proposal? Should some types of cost commitment be barred from submission?** The stakeholder proposal would allow developers to submit and PJM to consider “caps [on] project construction costs (either in whole or in part),²¹ project total return on equity (including incentive adders), or capital

¹⁹ *Competitive Transmission Development Technical Conference*, Written Testimony of Craig Glazer, Docket No. AD16-18-000 at 6 (June 22, 2016).

²⁰ *Competitive Transmission Development Technical Conference*, Statement of Anthony Ivancovich on behalf of the California Independent System Operator Corporation, Docket No. AD16-18-000 at 2–3 (Jun. 30, 2016).

²¹ See *Cost Cap Commitment for Competitive Proposals – Proposed Changes to the OA and M14F*, Materials Presented to the Markets & Reliability Committee (Jan. 25, 2018), available at: <https://pjm.com/-/media/committees-groups/committees/mrc/20180125/20180125-item-02a-cost-containment-draft-oa-revisions.ashx> (proposed Operating Agreement redlines); and <https://pjm.com/-/media/committees-groups/committees/mrc/20180125/20180125-item-02a-cost-containment-presentation.ashx> (presentation); Special

structure.”²² Such commitments offer the most significant benefits to consumers. While not free from complexities in implementation (like PJM’s current cost commitment Operating Agreement language), such commitments are easier to implement than other going forward costs. Streamlining variations would enhance PJM’s ability to implement such cost commitments and deliver the desired benefits.

However, PJM does have concerns regarding caps on Operations and Maintenance (“O&M”) expenses.²³ While underfunding of O&M can occur under a number of circumstances, PJM questions the prudence of capping O&M expenses for the entire life of a facility. Even the best planner cannot anticipate new regulatory requirements or standards that may increase costs. Simply put, cost commitment provisions capping O&M costs could compromise grid reliability and operational performance, as well as create other risks. PJM submits that the appropriate level of O&M should be dictated by good utility practice, not cost commitments. For these reasons, cost commitments that specifically cap O&M costs over the life of the facility will be evaluated with due regard to these potential

PC Session Cost Commitment and Competitive Proposals, PJM Special Planning Committee Session (May 24, 2017), available at: <https://www.pjm.com/-/media/committees-groups/committees/pc/20170524-special/20170524-cost-containment-and-competitive-proposals.ashx>; Cost Cap Commitment for Competitive Proposals and Going Forward Principles, PJM Special Planning Committee Session (Oct. 9, 2017), at slide 6, available at: <https://www.pjm.com/-/media/committees-groups/committees/pc/20171009-special/20171009-cost-commitment.ashx>.

Tariff revisions recently proposed by the New York Independent System Operator, Inc. (“NYISO”) appear to be limited to cost commitments for certain specified “Included Capital Costs” because “transmission project capital costs constitute the largest category of costs that will be recovered through rates approved by the Commission” and such caps “provide[] meaningful protection to ratepayers against cost overruns.” *New York Independent System Operator, Inc.*, Transmittal Letter, Docket No. ER20-617, at 1, 6-9, 11 (Dec. 17, 2019) (noting that the NYISO cost commitment proposal is limited to Public Policy Transmission Needs).

²² Stakeholder proposal to change Operating Agreement, Schedule 6, section 1.5.8(e) (footnote added).

²³ Notably, the Commission has found just and reasonable a cost commitment provision that excluded “any costs and expenses associated with the operation and maintenance of the Project.” *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61054 P 6 (Jan. 29, 2016) (internal quotation marks omitted).

negative consequences.

- **To what degree is a developer prepared to limit (or not) its ability to modify an asserted binding voluntary cost commitment at some point in the future?**

The answer to this question turns on the standard of review for changes to the cost commitment that a project proposer elects to include in a Commission-accepted DEA. Of course, an answer to this question assumes such a standard of review is clearly identified in a developer's proffered cost commitment provision even though the stakeholder proposal does not require one to be so identified. By way of example only, a developer could assert that all changes to its cost commitment proposal should be subject to an enhanced prudency review by the Commission pursuant to Section 205 of the Federal Power Act (for example, limiting changes only to cost increases that were not reasonably foreseeable at the time the commitment was made or that are a result of force majeure). Alternatively, a developer could possibly propose that any modifications to its proffered cost commitment would be subject to the *Mobile-Sierra* public interest standard.²⁴ There are likely other standards of review that a developer could elect to submit under the stakeholder proposal.

²⁴ See *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). The stakeholder proposal would appear to foreclose a *Mobile-Sierra*-level commitment. Compare *New York Independent System Operator, Inc.*, Transmittal Letter, Docket No. ER20-617, at 22-25 (Dec. 17, 2019) (noting that the NYISO cost commitment proposal seeks *Mobile-Sierra* treatment of included capital costs).

DEFICIENCY LETTER QUESTION 1.C:

- c. **Please provide examples of the type of “sufficient information” an entity submitting a cost containment proposal would need to provide to permit the Office of Interconnection to determine the binding nature of the proposal with respect to critical elements of project development. Explain how these examples relate to the minimum characteristics described in question 1b, if any, for a cost commitment proposal to be binding.**

PJM RESPONSE:

At a minimum, PJM would anticipate receiving from a project developer information and evidence that offers answers to each of the questions PJM listed in its response to Deficiency Letter Question 1.B, above.

DEFICIENCY LETTER QUESTION 2.A:

2. **PJM also proposes in section 1.5.8(e) that:**

In evaluating any cost, ROE, and/or capital structure proposal, PJM is not making a determination that the cost, ROE or capital structure results in just and reasonable rates, which shall be addressed in the required rate filing with the FERC. Stakeholders seeking to dispute a particular ROE analysis utilized in the selection process may address such disputes with the Designated Entity in the applicable rate proceeding where the Designated Entity seeks approval of such rates from the Commission. Neither PJM, the Designated Entity nor any stakeholders are waiving any of their respective FPA section 205 or 206 rights through this process. Challenges to the Designated Entity Agreements are subject to the just and reasonable standard.

- a. **Please explain how this provision affects the binding nature of a cost commitment when the transmission developer makes a filing under section 205 of the FPA that contradicts or exceeds the transmission developer’s binding cost commitment provision. For instance, assume a transmission developer submits a binding cost commitment proposal with a project construction cost cap of \$10 million and that proposal is selected for inclusion in the RTEP. Under section 1.5.8(e), would a developer be able to exceed its construction cost cap as long as it could show its costs were prudently incurred and necessary to**

advance the project? If not, explain what would be necessary under the PJM Tariff for the developer to exceed the construction cost cap. If the developer would be able to exceed its construction cost cap, how would the cost commitment provision be binding in this circumstance?

PJM RESPONSE:

The Commission is asking the right questions as the rate regulator. The determination would depend on the nature of the commitment and any exceptions, contingencies, or conditions in the cost commitment, as well as the proffered standard for review of any changes to any commitments. When making a cost commitment (and assuming no applicable exceptions, contingencies, or conditions), a developer would have to proffer the applicable standard of review for any cost overrun. Mechanically, in the case of any proposed modification to a proffered cost commitment, a modification to Schedule E for non-conforming terms and conditions in the DEA would have to be filed with the Commission. As a result, these issues should be considered and addressed in the context of a proffered non-conforming DEA as they do not lend themselves to a single generic answer.

DEFICIENCY LETTER QUESTION 2.B:

- b. In footnote 11 of PJM's transmittal letter, PJM states that only the non-conforming terms and conditions of a Designated Entity Agreement filed with the Commission shall be subject to the just and reasonable standard of review. Please explain what standard of review PJM views as applicable with respect to challenges to the conforming terms and conditions of the Designated Entity Agreement.**

PJM RESPONSE:

The Commission has previously accepted as just and reasonable the conforming terms set

forth in the *pro forma* Designated Entity Agreement.²⁵ As such, challenges to conforming terms and conditions in the accepted *pro forma* Designated Entity Agreement must be pursued pursuant to section 206 of the Federal Power Act.²⁶

DEFICIENCY LETTER QUESTION 3:

3. PJM proposes in section 1.5.8(e) that “[i]n scrutinizing the cost of project proposals, the Office of Interconnection shall determine for each project finalist’s proposal, including any Transmission Owner Upgrades, the comparative risks to be borne by ratepayers as a result of the proposal’s binding cost commitment or the use of non-binding cost estimates.” Please provide a more detailed explanation of the comparative review and analysis that PJM proposes to conduct to evaluate cost containment proposals, including the binding nature of such proposals, that are voluntarily presented as part of a proposal submitted in a competitive proposal window.

PJM RESPONSE:

If the Commission were to accept the stakeholder proposal, a more detailed explanation of the comparative review and analysis process that PJM proposes to conduct to evaluate cost commitment proposals would be included in Manual 14F, section 8.4 language. The PJM Markets & Reliability Committee recently endorsed such language on December 19, 2019.²⁷ Attached as Exhibit 1 to this letter is a copy of this Manual 14F, Section 8.4 language.

²⁵ See *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187 (Sept. 12, 2014) (conditionally accepting *pro forma* Designated Entity Agreement subject to a further compliance filing); *PJM Interconnection, L.L.C.*, Letter Order, Docket No. ER13-198-004 (accepting compliance filing relating to *pro forma* Designated Entity Agreement).

²⁶ See *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61054 P 27, 29 n.44 (Jan. 29, 2016) (noting that the Commission’s “decision is confined to the particular service agreement terms and conditions being approved in the instant proceeding” which in this particular case was limited to non-conforming terms and conditions since conforming terms had already been accepted as just and reasonable); cf. *Centerpoint Energy Gas Transmission Co., LLC*, 144 FERC ¶ 61,195 PP 29, 76-77 (Sept. 11, 2013) (implying that where the Commission accepts a *pro forma* service agreement the applicable standard of review for a challenge to such a conforming term is the unjust and unreasonable standard [or Section 206 of the Federal Power Act]).

²⁷ See PJM Manual 14F, section 8.4 language (endorsed Dec. 19, 2019), accessible at: <https://www.pjm.com/-/media/committees-groups/committees/mrc/20191219/20191219-item-03-3-m14f-revisions-redline.ashx>.

DEFICIENCY LETTER QUESTION 4:

4. PJM states that the stakeholder-proposed Operating Agreement revisions were “shared with the PJM Board [of Managers (Board)] for its review and comment through, among other things, public posting of the various iterations of the stakeholder materials on the PJM website.” Please explain whether PJM’s method of sharing revisions with the Board in this instance deviated from standard practice in providing the necessary “submission of the proposed amendment [to the Operating Agreement] to the PJM Board for its review and comments,” pursuant to section 18.6(a) of the Operating Agreement. If it did, what is the standard procedure used to submit a proposed amendment to the PJM Board for its review and comments? Please also explain the standard process by which the Board aggregates and submits comments to the Members Committee.

PJM RESPONSE:

PJM’s public posting on the PJM website is one of the means by which PJM shares proposed Operating Agreement revisions with the PJM Board.²⁸ In sharing materials in this manner, the PJM Board is given the opportunity for “review and comment.” Operating Agreement, section 18.6(a) does not require that the PJM Board aggregate and submit comments to the Members Committee whenever proposed Operating Agreement revisions are being considered. As noted in the PJM Answer to Comments and Protests, the PJM Board acting through the Board Reliability Committee was briefed from time to time by PJM management on the cost commitment issue generally and related stakeholder activities. As such, in an exercise of the PJM Board’s discretion when so moved by the review of proposed Operating Agreement revisions, Board members, individually or in concert, may offer comments to the Members Committee.²⁹

²⁸ See PJM Manual 34: PJM Stakeholder Process at sections 15.5 and 15.6 (noting that stakeholder process updates are posted on PJM’s website to “provide documented transparency between the Members and the Board of Managers”). In general, at least one member of the PJM Board attends each Members Committee meeting. In addition to the posting of stakeholder meeting materials, in the case of important stakeholder initiatives and strategic decisions, PJM management reviews such matters with the PJM Board and seeks the PJM Board’s input. Stakeholders may elect to raise issues of significance or interest with the PJM Board by letter or at the Liaison Committee meeting.

²⁹ The Commission should be cautious about inviting litigation, in the context of protests to specific tariff filings, on questions of an RTO’s internal governance and Board procedure. See, e.g., *California Independent System Operator*

III. CORRESPONDENCE

Correspondence and communications regarding this filing should be sent to:³⁰

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IV. SERVICE

PJM has served a copy of this filing on all PJM Members and on all state utility regulatory commissions in the PJM Region by posting this filing electronically. In accordance with the Commission's regulations,³¹ PJM will post a copy of this filing to the FERC filings section of its Web site, located at: <http://www.pjm.com/documents/ferc-manuals/ferc-filings.aspx>, with a specific link to the newly-filed document, and will send an email on the same date as this filing to all PJM Members and all state utility regulatory commissions in the PJM Region³² alerting them of the filing and its availability on PJM's Web site. PJM also serves the parties on the Commission's official service list for this docket. Notwithstanding the foregoing, if the document

v. FERC, 372 F.3d 395, 398, 403 (D.C. Cir. 2004) (holding the Commission lacked authority to remove and replace members of the California Independent System Operator's Board of Governors).

³⁰ To the extent necessary, PJM requests waiver of Commission Rule of Practice and Procedure Rule 203(b)(3) to permit these representatives to be included on the official service list compiled by the Secretary for this proceeding.

³¹ See 18 C.F.R. §§ 35.2(e) and 385.2010(f)(3).

³² PJM maintains, updates, and regularly uses e-mail lists for all PJM members and affected state commissions.

is not immediately available by using the referenced link, the document will be available through the referenced link within 24 hours of the filing. A copy of this filing will also be available on the FERC's eLibrary Web site at <http://www.ferc.gov/docs-filing/elibrary.asp> in accordance with the Commission's regulations and Order No. 714.

Respectfully,

/s/ Mark J. Stanisz

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DATE: January 22, 2020

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on those parties on the official Service List compiled by the Secretary in these proceedings.

Dated at Audubon, Pennsylvania this 22nd day of January, 2020.

/s/ Mark Stanisz
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EXHIBIT 1

Manual 14F – Section 8.4 Language

8.4 Comparative Cost Framework

8.4.1 Applicability

PJM will initiate the comparative cost framework to evaluate the costs of project proposals that are submitted through PJM's competitive proposal window process, with the final comparative cost framework being performed once project proposals are found to pass an engineering screen. The comparative cost framework is a multi-step process that calculates project costs and permits the comparison of costs among projects addressing the same violation(s) or constraint(s) (competing projects) submitted through the proposal window.

If there is only one project proposal submitted to address violation(s) or constraint(s), the comparative cost framework analysis set forth here is not necessary. Instead, PJM will review the potential risks, if any, associated with the estimated costs submitted for that project proposal.

8.4.2 Assessment of Project Proposals With Cost Commitment Provisions

If a project proposal includes a cost commitment provision, PJM will assess the details of the proposed cost commitment provision and corresponding cost estimate. Such assessment may include, for example, a review of proposed project-specific risks, scope of the proposed project, the estimated construction costs, risks of proposed costs increasing relative to the cost commitment provision, risks of proposed costs exceeding the cost commitment provision, and the risk of the sponsor's inability to complete the proposed project.

A cost commitment provision submitted as part of a project proposal may include, but is not limited to, the capital structure (debt to equity ratio) and caps on: initial capital costs (total costs associated with bringing the project into service); the annual revenue requirement; the rate of return on equity (ROE); the debt cost; the total capital cost; allowance for funds used during construction (AFUDC); construction work in progress (CWIP); abandonment costs and schedule guarantees. A cost commitment proposal may also exclude defined cost elements from the cost commitment provision.

8.4.3 Assessment of Project Proposals Without Cost Commitment Provisions

If a project proposal does not include a cost commitment provision, PJM will assess factors that may include, but are not limited to, project specific risks (for example, the risk of a proposed project's estimated costs being exceeded), scope of the project, magnitude of the proposed cost, the estimated construction costs, annual revenue requirements and the cost of capital.

8.4.4 Financial Analysis Used In the Comparative Cost Framework

In order to perform a comparative cost framework analysis, PJM will first identify the competing projects to be compared. Then, for each set of identified competing projects, PJM will perform a financial analysis using the following non-exhaustive list of defined inputs: feedback from the detailed feasibility review; data and information from the project proposals submitted to PJM; and financial input assumptions and cost commitment exclusions. The financial input assumptions

may include, for example: ROE, capital structure, debt cost, administrative and general costs (A&G), ongoing capital expenditure (CapEx), service life, federal tax rate, state tax rate, property tax rate, AFUDC, CWIP, and any schedule guarantees.

Financial analysis scenarios will then be used to evaluate the sensitivity of the project proposals' estimated costs relative to variations in the magnitude of, and combinations of, certain input levels.

The estimated costs of project proposals will be compared using the net present value of the annual revenue requirements over the life of each project proposal. PJM will also consider any separate or additional upgrade costs required to accommodate the proposed project on the system.

Prior to PJM running its financial analyses for the project proposals in each set of competing projects, PJM will advise the Transmission Expansion Advisory Committee of the key inputs to the financial analyses that PJM plans to use, and any additional sensitivities it will perform.

Upon completion of the final cost comparative framework, PJM will present to stakeholders the results of the financial analysis.

In accordance with the Open Access Transmission tariff, Attachment M, the MMU has access to all data submitted to PJM through PJM's competitive proposal window process.

The MMU may, at its discretion, perform an independent financial analysis of projects submitted to PJM through PJM's competitive proposal window process.

8.4.5 Review Cost Commitment Election

The quality and effectiveness of the cost commitment selected by the project proposer, including any exceptions, exclusions or limitations to the elected level of cost commitment, will also be evaluated by PJM.