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VIA ELECTRONIC FILING

Hon. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Amendments to the PJM Consolidated Transmission Owners Agreement
Docket No. ER22-358-000**

Dear Secretary Bose:

Pursuant to Section 8.5.1 of the Consolidated Transmission Owners Agreement (“CTOA”)¹ by and among the PJM Transmission Owners (“PJM TOs”) and PJM Interconnection, L.L.C. (“PJM”), Section 205 of the Federal Power Act (“FPA”)² and Section 35.13 of the Federal Energy Regulatory Commission’s (“Commission”) Rules and Regulations,³ the PJM TOs respectfully submit for filing amendments to Sections 8.4.3, 8.4.4, 8.5.1 and 8.5.2 of CTOA (“CTOA Amendments”).⁴ The CTOA Amendments have been approved by the Transmission Owners Agreement-Administrative Committee (“TOA-AC”) in accordance with the requirements of Section 8.5.1 of the CTOA.

On October 21, 2021, the TOA-AC approved the CTOA Amendments to address new developments in PJM and industrywide that have occurred since the CTOA was entered into in 2006. These developments, as further described below, have resulted in changes to the

¹ Rate Schedule No. 42.

² 16 U.S.C. § 824d(c) (2021).

³ 18 C.F.R. § 35.13 (2020).

⁴ Pursuant to Order No. 714, this filing is submitted by PJM on behalf of the PJM TOs as part of an XML filing package that conforms with the Commission’s regulations. PJM has agreed to make all filings on behalf of the PJM TOs pursuant to its responsibility to maintain PJM governing documents. Thus, the PJM TOs have requested PJM submit this Agreement in the eTariff system.

number and character of PJM TOs, which could make it more difficult for the PJM TOs to carry out their responsibility under the PJM Open Access Transmission Tariff (“Tariff”) to propose necessary and beneficial Tariff changes. Specifically, the CTOA Amendments will ensure that a proposal that has received approval from PJM TOs, representing ownership of 95 percent of the Transmission Facilities in the PJM Region, can be adopted. The changes proposed herein appropriately preserve the rights of the PJM TOs in an evolving PJM landscape and allow the PJM TOs to continue to effectively execute their CTOA responsibilities.

The PJM TOs respectfully request that the Commission accept the CTOA Amendments for filing without hearing, modification, or condition, effective January 10, 2022.⁵

I. INTRODUCTION AND EXECUTIVE SUMMARY

All entities owning or operating Transmission Facilities integrated with the PJM Region must be a Party to the CTOA.⁶ Unlike other Regional Transmission Organizations (“RTOs”), there is no minimum Transmission Facility ownership threshold to qualify as a PJM TO and there is no other agreement integrating Transmission Facilities into the PJM Region. Only the CTOA identifies the specific duties and functions that Transmission Facility owners transfer to PJM. And only the CTOA specifies how the PJM TOs collectively exercise their rights under the FPA that they have not voluntarily transferred to PJM. These include the right to file joint rates and the PJM transmission rate design, including how the costs of Transmission Facilities are allocated. The subject of the CTOA Amendments is the voting structure through which the PJM TOs exercise their collective rights under the CTOA.

Under the CTOA, votes are tabulated twice: once based on the votes of individual, unaffiliated PJM TOs (“Individual Vote”) and once based on the net asset value of each PJM TO’s Transmission Facilities (“Weighted Vote” together with Individual Vote, “Individual and Weighted Vote” or “concurrent voting method”). To take action on important issues, such as a change to the Tariff, a two-thirds majority of both the Individual and Weighted Vote is required, unless the proposed action is supported by 95 percent of the Weighted Vote, in which case a simple majority of the Individual Vote is required. The CTOA also contains rules requiring a quorum be present to take action, also determined based upon Individual and Weighted Votes.

⁵ January 10, 2022 is at least sixty (60) days from the date of this filing. See 16 U.S.C. § 824d(d) (2021); 18 C.F.R. § 35.3 (2020).

⁶ CTOA § 3.1. Under the CTOA, before PJM may take functional control over an entity’s Transmission Facilities, the entity must become a Party to the CTOA. *Id.* § 6.1. All capitalized terms not defined in this transmittal letter have the meaning set forth in the CTOA, Tariff or Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), as applicable.

While this voting system has worked reasonably well since the CTOA was entered into fifteen years ago, recent developments in the ownership of Transmission Facilities have created a concern among the PJM TOs that in the future it will become increasingly difficult to achieve a majority Individual Vote even where action is supported by a Weighted Vote representing 95 percent of the ownership of PJM's Transmission Facilities. This could prevent the PJM TOs from proposing needed and beneficial modifications to the Tariff to, among other things, establish or modify joint rates and modify PJM's transmission rate design – both of which are reserved to the PJM TOs under the Tariff and the CTOA. Specifically, in recent years, changes in the North American Electric Reliability Corporation's ("NERC") Rules defining the Bulk Electric System ("BES") have brought more Transmission Facilities within PJM's operational control. In addition, Order No. 1000 expanded opportunities to sponsor and develop transmission projects. Neither of these developments was contemplated at the time the CTOA was adopted. However, as described above, both developments are leading to expanded transmission ownership in PJM and introducing new types of transmission owners.

The PJM TOs believe it is important to address the changes that will result from these developments in order to avoid voting deadlocks or failures to achieve the quorum required to even take a vote under the existing Individual Vote majority requirement and the CTOA quorum rules. The failure to address these changes could prevent the PJM TOs that represent ownership of almost all of the transmission assets that PJM uses to provide transmission service, including to transmission customers in every state served by PJM and the District of Columbia, from proposing for Commission consideration rate and rate design changes to protect their investment in PJM and fairly allocate the costs of Transmission Facilities among their customers.

The CTOA Amendments address this concern by removing the Individual Vote majority requirement where an extreme supermajority of 95 percent of the Transmission Facility ownership supports a proposal. It will also permit action to be taken where a quorum of 95 percent of the Transmission Facility ownership is present. Comparable changes are made to the way votes are tabulated on less important issues, which require only a simple majority. The CTOA Amendments also include a provision to provide the flexibility to conduct these simple majority votes notationally, *i.e.*, without holding a formal meeting, which will facilitate the TOA-AC's ability to conduct its business on many matters where a separate in-person or virtual meeting is unnecessary or infeasible.

The CTOA Amendments do not change the votes and voting rights of any PJM TO. Importantly, the requirement that all entities owning or operating Transmission Facilities that are under PJM's functional control become Parties to the CTOA will remain, since it is the foundation of the RTO's ability to offer open access transmission service. All PJM TOs with cost-of-service rates under the Tariff will continue to be able to vote on Tariff changes and the same criteria for assigning Individual and Weighted Votes will continue to be applied to all PJM TOs. In sum, the CTOA Amendments will permit the PJM TOs to meet their collective responsibilities under the CTOA and exercise their most significant retained right reserved to them under Section 205 of the FPA to propose for the Commission's consideration rate, rate design and other Tariff changes that are needed to address and support the evolving role of transmission in PJM.

II. BACKGROUND

The CTOA Amendments are narrowly focused and leave the voting rules set forth in the CTOA largely unchanged. As discussed below, since all PJM transmission owning entities must be Parties to the CTOA, the voting rules have been modified in the past to reflect the changing makeup of Transmission Facility ownership in PJM. The CTOA Amendments represent an incremental adjustment to those rules to maintain the ability of the PJM TOs to meet their responsibilities under the FPA, the CTOA, and the Tariff.

A. All Transmission Owning Entities in PJM are Parties to the CTOA

All PJM TOs must be a Party to the CTOA.⁷ Unlike other RTOs, there is no other agreement that integrates Transmission Facilities with the PJM Region or additional minimal requirements to participate as a transmission owner in governance decisions.⁸ For example, in the Southwest Power Pool (“SPP”), the Governing Documents Tariff specifies that to be a “Transmission Owning Member” and participate in various governing bodies as such, an entity must own 500 miles of non-radial facilities,⁹ while the SPP Membership Agreement separately defines the obligations of entities that are “Transmission Owners,” but does not contain a similar threshold for being subject to those obligations.¹⁰ By contrast, in PJM, if an entity owns any Transmission Facilities integrated with the PJM Region and under PJM functional control, regardless of the value or type of its Transmission Facilities, it must be a Party to the CTOA which then affords the entity voting rights as a PJM TO. Indeed, under the CTOA, becoming a Party is a condition precedent to PJM taking functional control over an entity’s Transmission Facilities.¹¹

The CTOA sets out the PJM TOs’ responsibilities and commitments to PJM as well as PJM’s responsibilities and commitments to the PJM TOs. Under the CTOA, the PJM TOs agree to transfer to PJM functions that under the FPA each of the PJM TOs would carry out individually under tariffs and agreements subject to Commission review and approval, as each did prior to joining PJM.¹² These functions include operations and planning

⁷ CTOA § 3.1.

⁸ See, e.g., NYISO Open Access Transmission Tariff, § 31.1.7.3 (providing separate rules for non-parties to the original ISO/TO Agreement to enter into a separate Operating Agreement), *id.* § 31.11 (*pro forma* Operating Agreement for new transmission owners).

⁹ SPP, Inc., Governing Documents Tariff, § 1.0 (definition of “Transmission Owning Member”).

¹⁰ See *id.* Membership Agreement, § 1.0 (definition of “Transmission Owner”).

¹¹ CTOA § 6.1 (“PJM shall condition the transfer of functional control over an entity’s Transmission Facilities to PJM on such entity becoming a Party to this Agreement.”).

¹² Of course, the original or “Classic” PJM TOs provided some of these functions though the precursor of the PJM RTO, which predates the FPA.

enhancements and expansions to comply with specific planning criteria.¹³ By becoming a Party to the CTOA, each PJM TO voluntarily agrees to physically operate its Transmission Facilities under the direction of PJM.¹⁴ In sum, the mutual obligations set out in the CTOA form the basis upon which PJM provides open access transmission throughout the PJM Region and maintains its ability to do so.

However, the CTOA also clearly states that rights and functions not transferred to PJM remain with the PJM TOs.¹⁵ Thus, under the CTOA, each PJM TO continues to own and physically operate its transmission facilities,¹⁶ to retain its right to plan transmission facilities where such authority has not been transferred to PJM,¹⁷ to develop and file rates for use of its own transmission facilities,¹⁸ and, collectively, under the CTOA, to develop and file joint rates and the PJM transmission rate design.¹⁹ Where the PJM TOs' retained Section 205 rights are exercised collectively, such as in filing joint rates, rate design, and other Tariff changes that affect them generally,²⁰ the CTOA provides the mechanism through which they exercise those retained rights.

B. The CTOA Voting Structure

The CTOA features a concurrent voting method. In general, for a proposal to be adopted under the CTOA, it must be supported by the requisite majority of both the Individual Vote and the Weighted Vote. Each PJM TO is entitled to cast one Individual Vote, with two limitations. First, affiliates are entitled to a single Individual Vote (“Affiliate Rule”).²¹ Affiliation is determined by a simple “control” test.²² Second, two or more PJM TOs that are not affiliates are entitled to a single Individual Vote if they are PJM TOs only by

¹³ See, e.g., CTOA §§ 4.1, 4.9. The CTOA also commits the PJM TOs, *inter alia*, to construct new Transmission Facilities when so designated by PJM, *id.* § 4.2; to interconnect new customers, *id.* § 4.3; to coordinate outages and maintenance, *id.* §§ 4.4, 4.8; and, critically, to operate and maintain their facilities according to reliability and PJM standards and Good Utility Practice, *id.* § 4.5.

¹⁴ *Id.* § 4.1.2.

¹⁵ *Id.* §§ 5.4, 5.6; see *PJM Interconnection, L.L.C.*, 172 FERC ¶ 61,136 at P 82 (“Attachment M-3 Amendments Order”), *order on reh’g*, 173 FERC ¶ 61,225 at P 18 (2020) (“Under the CTOA and the Tariff, the PJM TOs retain all rights that they have not specifically granted to PJM.” (citing *Atl. v. FERC*, 295 F. 3d 1, 10 (D.C. Cir 2002) (“*Atlantic City P*”)).

¹⁶ CTOA § 5.2.

¹⁷ See *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,225 at P 18; CTOA § 5.6 (retaining the right to “retire” and “build” their Transmission Facilities).

¹⁸ CTOA § 7.1.

¹⁹ *Id.* §§ 7.2, 7.3. Each PJM TO also retains the right to withdraw from PJM. *Id.* § 3.2.

²⁰ See, e.g., Attachment M-3 Amendments Order at PP 81-87.

²¹ *Id.* § 1.11.

²² *Id.* § 1.2.

virtue of jointly owned Transmission Facilities. Thus, for example, if a Transmission Facility is owned by two entities, each might be required to become a Party to the CTOA, but unless they separately own other Transmission Facilities integrated with the PJM Region, they would only be collectively entitled to a single Individual Vote.²³

The Weighted Vote is determined by the net book value of each PJM TO's Transmission Facilities as reported to the Commission in FERC Form No. 1 or 1F. PJM TOs that are not required to file a FERC Form No. 1 or 1F must certify their Transmission Facility net book value through a statement by an independent auditor. A PJM TO's Weighted Vote is limited to 24.9 percent of the total Weighted Vote.²⁴ Weighted votes are limited to PJM TOs that recover their transmission revenue requirement through a cost-of-service rate under Tariff, Attachment H (Network Integration Transmission Service ("NITS")) and Tariff, Schedules 7 and 8 (Point-to-Point Transmission Service). A PJM TO that recovers its costs through other means, such as a merchant transmission facility, is deemed a "Zero Revenue Requirement Party" and has no Weighted Vote and does not vote on certain issues, as described below.²⁵ The PJM TOs are not proposing to change the rules for determining Weighted Votes or the rules governing which PJM TOs may vote on various issues.

Voting under the CTOA is divided into two subject areas. The first subject area, amendments to the CTOA, jointly developed comments on the Regional Transmission Expansion Plan ("RTEP"), termination of a Party or the assignment of a Party's rights, or filings to change Tariff provisions governing the recovery of PJM TO transmission-related costs, including joint rates or the PJM transmission rate design, require a two-thirds majority of both the Individual and Weighted Vote with two exceptions, discussed below.²⁶ Where the vote is to approve a filing related to PJM TO cost recovery, the vote is limited to PJM TOs recovering such costs through a cost-of-service rate under the Tariff.²⁷

The second subject area includes all other matters. Voting requires a simple majority of both the Individual and Weighted Vote. The PJM TOs are not proposing any change to these subject areas and which PJM TOs may vote on them.

²³ *Id.* § 1.11.

²⁴ *Id.* § 1.31.

²⁵ *Id.* § 1.32. If, and to the extent that a Zero Revenue Requirement Party does recover some of its costs through Tariff, Attachment H and Tariff, Schedules 7 and 8, it would be entitled to a Weighted Vote.

²⁶ *Id.* § 8.5.1. An individual PJM TO's filing to recover cost-of-service rates under the Tariff, for example, its NITS rate, does not require approval under the CTOA. Instead, its right to make such a filing is guaranteed under Section 9.1(a) of the Tariff and Section 7.1 of the CTOA.

²⁷ *Id.* § 8.5.3. Zero Revenue Requirement Parties also do not vote on amendments to Section 8.5. *Id.* Accordingly, the vote to approve the amendments to Sections 8.5.1 and 8.5.2, did not include Zero Revenue Requirements Parties. Zero Revenue Requirements Transmission Parties did vote on the amendments to Sections 8.4.3 and 8.4.4.

As noted above, there are two exceptions to the two-thirds majority rule under CTOA, Section 8.5.1. First, if a proposal fails to secure two-thirds of the Individual Vote, it still passes if it gains a majority of the Individual Vote and PJM TOs casting negative Individual Votes do not exceed five percent of the Weighted Vote (“Five Percent Rule”). Put differently, notwithstanding a proposal’s failure to secure two-thirds of the Individual Vote, it will succeed if supported by PJM TOs constituting a majority of the Individual Vote plus 95 percent of the Weighted Vote. The Individual Vote majority requirement with respect to those areas where a supermajority vote is required is one of the subjects of the CTOA Amendments.²⁸

Second, a proposal will succeed if supported by the requisite two-thirds majority of the Individual Vote but fails to gain support of two-thirds of the Weighted Vote solely because fewer than three PJM TOs voted against it (“Three Negative Votes Rule”).²⁹ The Three Negative Vote Rule would be unchanged by the instant filing.

Finally, the CTOA requires that, to take action, the TOA-AC must meet. Furthermore, taking a vote on such action requires a quorum representing at least 50 percent of the Individual Votes and 50 percent of the Weighted Votes.³⁰ Both the meeting requirement and the quorum rule would be modified by the CTOA Amendments, as discussed below.

Exhibit C to this transmittal letter contains examples of the voting under the existing CTOA voting rules and how this would change under the CTOA Amendments.

C. Evolution of the CTOA Voting Rules

PJM has evolved from its initial inception in 1927, as have the agreements governing PJM TO participation. PJM was originally organized as a joint venture with all its functions performed by one or more of its member utilities. In 1993, the member utilities formed the PJM Interconnection Association to manage what by then had become a power pool. It became a fully independent organization, opened membership beyond its utility members, elected an independent Board of Managers, and was approved by the Commission as an Independent System Operator (“ISO”) in 1997. Finally, in 2002, PJM achieved its status as an RTO.³¹

²⁸ Under the CTOA, abstentions and absent PJM TOs are not considered in the tabulation of votes, rather only votes “cast at a meeting” are considered. CTOA §§ 8.5.1, 8.5.2.

²⁹ *Id.* Although this provision requires the support of a majority of the Weighted Vote, that requirement is automatically fulfilled since the Weighted Vote of any individual Party is limited to 24.9 percent. Thus, the maximum negative vote a proposal could have in this situation is 49.8 percent.

³⁰ CTOA § 8.4.3.

³¹ See <https://www.pjm.com/about-pjm/who-we-are/pjm-history>.

The concurrent voting method has existed since PJM became an ISO in 1997. At that time, most of the PJM TOs were the only Transmission Owners in their Zones³² and there were no Zero Revenue Requirement Parties. The original Transmission Owners Agreement (“Original TOA”) filed as part of the package establishing PJM as an ISO featured the concurrent voting method, the delineation of types of action requiring either a two-thirds majority or a simple majority, the Three Negative Votes Rule,³³ and the cap on the Parties’ Weighted Vote.³⁴ Although affiliated entities could cast only a single Individual Vote, the Original TOA specifically provided that the only three PJM TOs at the time that were affiliated were to be treated as a single entity for voting purposes.³⁵

While the Original TOA made any transmission owner in PJM eligible to become a Party, it did not require it. The parties to the Original TOA had operated as a tight power pool for many decades and evolved as transmission owners and public utilities accordingly. However, as PJM expanded over its first decade of operation as an ISO and then a RTO, new members to the west and south without that shared evolution opted to sign separate transmission owners agreements that were similar to the Original TOA, but not identical.³⁶ Finally, at the encouragement of the Commission,³⁷ the PJM TOs filed to consolidate the three transmission owners agreements into the CTOA, which was filed on January 17, 2006³⁸ and approved by the Commission on March 17, 2006.³⁹

In integrating the three transmission owners agreements, the PJM TOs made three significant changes relevant to the instant filing. First, they agreed that the CTOA would be

³² The lone exception to this was the PP&L Zone, in which UGI Utilities, Inc. and Allegheny Electrical Cooperative owned small shares of the Transmission Facilities in the Zone.

³³ *Atlantic City Electric Company*, Filing of the PJM Supporting Companies, Docket Nos. ER97-3189, *et al.*, at Attachment F, Transmission Owners Agreement dated as of June 2, 1997, § 6.5.

³⁴ *Id.* § 1.20. The cap was set at 25 percent, rather than 24.9 percent as in the CTOA.

³⁵ Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company were each owned by General Public Utilities (“GPU Companies”).

³⁶ See *PJM Interconnection, L.L.C. and Allegheny Power*, 95 FERC ¶ 61,060 (2001) (accepting the West Transmission Owners Agreement dated as of March 13, 2001, Rate Schedule FERC No. 33); *Am. Elec. Power Serv. Corp.*, 103 FERC ¶ 61,008 (2003) (accepting the amended and restated West Transmission Owners Agreement as of December 2, 2002); *PJM Interconnection, L.L.C. and Va. Elec. & Power Co.*, 109 FERC ¶ 61,012 (2004) (“PJM South Order”) (accepting the PJM South Transmission Owner Agreement, Rate Schedule FERC No. 39).

³⁷ PJM South Order at P 24.

³⁸ *Monongahela Power Co., et al.*, FERC Docket Nos. ER06-487-000, *et al.* (2006) (“CTOA Transmittal Letter”).

³⁹ *Monongahela Power Co.*, 114 FERC ¶ 61, 283 (2006). The PJM TOs were required to remove a redundant provision and make certain corrections, which are not related to the instant filing. See *Monongahela Power Co.*, FERC Docket No. ER06-487-001 (Letter Order approving compliance filing, Sept. 6, 2006).

the sole transmission owners agreement in PJM and that all entities with Transmission Facilities integrated with PJM and subject to PJM’s operational control would be required to become Parties to the CTOA and abide by the obligations that it imposed on PJM TOs and the commitments made to PJM.⁴⁰

Second, in recognition that all Transmission Owners in PJM would be required to become Parties to the CTOA, the PJM TOs added a provision to the concurrent voting structure to reduce the potential for deadlocks that would prevent the PJM TOs from taking necessary action, for example, to file for changes to PJM joint rates and transmission rate design, which require a two-thirds majority of the Individual and Weighted Vote. This provision, described above,⁴¹ required that a proposed action under Section 8.5.1 would pass if supported by 95 percent of the Weighted Vote and a simple majority of the Individual Vote.

Third, in recognition that several of the new PJM TOs included several operating company transmission owning affiliates, each of which would become a Party to the CTOA, a definition of “Affiliate” was added to the agreement.⁴²

D. The Growth in Transmission Owning Entities in PJM

Subsequent to the approval of the CTOA, there have been several significant developments affecting the number of PJM TOs and the type of Transmission Facilities that qualify an entity to become a PJM TO. First, in 2014, the Commission approved proposed changes to NERC’s BES definition that made it more difficult for certain local network configurations, often employed by small municipal electric systems, to qualify for an exclusion from the definition.⁴³ The effect of the change was to make these municipal systems eligible to have their Transmission Facilities integrated with the PJM Region and

⁴⁰ CTOA § 3.1. PJM is obligated to enforce this requirement. *Id.* § 6.1; *see also* CTOA Transmittal Letter at 10.

⁴¹ *See supra* Section II.B.

⁴² CTOA § 1.2. Other changes were made to the CTOA voting rules that are not affected by the CTOA Amendments. The cap on the Weighted Vote was lowered to 24.9% from 25% so that under the Three Negative Votes Rule, the remaining Weighted Vote would constitute a clear majority. Also, the definition of Zero Revenue Requirement Party was added to complement the limitation on voting on tariff provisions to PJM TOs that recover their transmission costs through regulated rates under the Tariff. As explained in the CTOA Transmittal Letter, this provision “ensure[s] that the Transmission Owners’ rights under Section 205 and [*Atlantic City I* and *Atlantic City II*] are preserved.” CTOA Transmittal Letter at 10.

⁴³ *North Am. Elec. Reliability Corp.*, 146 FERC ¶ 61,199 (2014). Before the change, local networks that contained elements operating below 100 kV were automatically excluded from the BES definition under Exclusion E1. Under the revised definition, owners of these networks needed to apply to be excluded from the definition under exclusion E3, if they contained elements operating above 50 kV.

placed under PJM’s operational control and, of course, to become PJM TOs and thus Parties to the CTOA.⁴⁴

Second, the Commission issued Order No. 1000,⁴⁵ which opened transmission planning to participation by non-incumbents. This made possible the award of RTEP projects to single, project-based company sponsors. Since these entities need not comprise integrated transmission systems, but may be created to own specific projects, their ownership would be distinct and not covered by the Affiliate Rule.⁴⁶ For example, if two different projects are developed by a single entity, but that entity does not retain controlling ownership or the power to direct the management of the entities owning both projects, and recruits investors that are distinct as between the two projects, the projects’ ownership entities would each have an Individual Vote.⁴⁷

The impact of these developments is continuing as is the expectation of additional Parties to the CTOA, which has raised concerns that the current voting structure will not adequately represent the transmission asset ownership in PJM and, if unchanged, could make it very difficult to propose to the Commission Tariff changes that protect the PJM TOs’ substantial investment in the PJM Transmission System and that fairly allocate its costs among their transmission customers. The CTOA Amendments are designed to permit the TOA-AC to continue meeting its obligations under the PJM Tariff where almost all of the PJM Transmission Facility ownership agrees that change is needed and appropriate.

⁴⁴ These municipal systems have additional incentives to join PJM as PJM TOs if they operate BES facilities. First, PJM, as the “Transmission Operator,” would assume some of the NERC reliability obligations that come with owning and operating BES facilities. Second, if they file a cost-of-service rate in Attachment H, the cost of any necessary enhancements or expansions to their Transmission Facilities that PJM includes in the RTEP would be included in the Zonal NITS rate and paid for by all transmission customers in the Zone in which they were located, in addition to their municipal customers.

⁴⁵ Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and 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).

⁴⁶ The definitions of “Affiliate” and “Individual Vote” are keyed to ownership or equivalent rights, except with respect to certain electrical cooperatives. Thus, RTEP projects developed or operated by a common entity may not be subject to the Affiliate Rule, unless there is common ownership or control of the Transmission Facilities constituting such project: “Affiliate or Affiliation shall mean any two or more entities, one of which controls the other or that are under common Control.” CTOA § 1.2.

⁴⁷ In addition to these developments, mergers among PJM TOs reduced the number of Individual Votes because of the operation of the Affiliate Rule. Three of the original CTOA PJM TOs representing five transmission Zones were eliminated as separate Individual Votes. Allegheny Power was acquired by FirstEnergy Corporation (which owned the GPU Companies) and Pepco Holdings (which was comprised of three Zones, Pepco, Delmarva, and Atlantic City Electric) and Baltimore Gas and Electric Company were acquired by Exelon Corporation.

III. THE AMENDMENTS TO THE CTOA

A. Section 8.5.1 – Elimination of the Individual Vote Majority Requirement Where 95 Percent of the Weighted Vote Supports Action

The amendments to CTOA Section 8.5.1 would eliminate the requirement of an Individual Vote majority where opposing Individual Votes represented only five percent or less of the Weighted Vote. Put another way, the TOA-AC could approve an action covered by Section 8.5.1 that does not receive the support of two-thirds of the Individual Vote if it is supported by an extreme supermajority of 95 percent of the Weighted Vote alone. As explained below, this amendment is necessary given changes that have occurred in the fifteen years since the CTOA was adopted, which are expected to increase the number of PJM TOs. It also reflects the importance of maintaining the requirement that all transmission owners in PJM become Parties to the CTOA, while preserving the ability of the PJM TOs to exercise their rights under the FPA to file joint rates and rate design Tariff changes related to the recovery and allocation of the costs of providing transmission service in PJM.

The expected continuation of the growth of smaller or single-project transmission owners creates the possibility that the required majority of the Individual Votes could not be achieved. As a result, the PJM TOs would not be able to propose important or beneficial joint rate or rate design changes, notwithstanding that a proposal is supported by PJM TOs with substantial investments in PJM Transmission Facilities, *i.e.*, the owners of 95 percent of the Transmission Facilities comprising the PJM Transmission System.

As noted above, before the CTOA was adopted, there were three transmission owners agreements in PJM. One of the purposes for adopting the CTOA was to ensure that all transmission owners were subject to a consistent set of obligations with respect to the RTO (and PJM was subject to a consistent set of obligations to the PJM TOs), since the CTOA serves as the foundation of PJM's ability to provide open access transmission service across the PJM Region. Maintaining this consistent set of obligations, such as maintaining transmission facilities, taking direction from PJM in the operation of those facilities, and providing the information required for PJM to plan required enhancements and expansions in the RTEP, is a central feature of the CTOA and why all transmission owners no matter how small or regardless of the type of Transmission Facilities they own need to be Parties to the CTOA.

At the same time, the CTOA must recognize that interests of the PJM TOs may differ depending on the level of their investment in the Transmission System, or even their primary business interests. As of December 31, 2020, PJM TOs have more than \$67 billion invested in the Transmission System, with individual PJM TO investments ranging from just over \$140,000 to almost \$15 billion. The revenue requirement filed to recover the costs of operating these facilities as well as a return of and on capital ranged from just over \$4 million annually to nearly \$2.3 billion.⁴⁸ Thus, the financial impact of Tariff filing decisions on the shareholders or Member entities that own these facilities varies substantially, as does their

⁴⁸ *PJM Interconnection, L.L.C.*, Docket No. ER19-2105-000, 2021 Information Filing (Dec. 1, 2020).

stake and interest in formulating and proposing such changes. The new PJM TOs are unlikely to be owners and operators of extensive transmission networks serving thousands or millions of customers. Rather, the new PJM TOs will more likely be project developers or even generators with interests in limited discrete transmission projects or small municipal systems that are no longer exempt from NERC's rules governing BES transmission.

The requirement that all owners of Transmission Facilities be a Party to the CTOA is significantly more inclusive than the qualifications for sector membership under the Operating Agreement. For example, in order to qualify as a "Transmission Owner" under the Operating Agreement, a member must have an "active and significant business interest" in the sector.⁴⁹ These requirements do not apply to the CTOA. Therefore, even where an entity has active and significant business interests in other sectors, and indeed may be participating in PJM as a "Generation Owner", if that entity owns even a single line-mile of Transmission Facilities, it is a "Transmission Owner" under the CTOA and must be a Party.

The PJM TOs must maintain their ability to address the needs of the RTO within their retained responsibilities under the CTOA. They must be able to propose needed and beneficial Tariff changes as well as take steps to protect their investments both with respect to their relationship with and obligations to PJM and with respect to Tariff provisions that affect the recovery and allocation of their costs.⁵⁰ Removal of the Individual Vote majority requirement, where there is near unanimity among the Transmission Facility ownership, will maintain the PJM TOs' ability to act, while preserving the requirement that all entities owning Transmission Facilities integrated with the PJM Region become Parties to the CTOA and subject to its obligations and requirements. Even with the change, the 95 percent Weighted Vote threshold will still be a difficult test to meet since asset owners amounting to just over five percent of the Weighted Vote would be enough to defeat a proposal.

B. Section 8.5.2 – Action by a Simple Majority

CTOA, Section 8.5.2 currently provides that action by the TOA-AC, not requiring a two-thirds vote, must be approved by a simple majority of the Individual and Weighted Vote. For the same reasons that the PJM TOs are proposing to remove the majority requirement in Section 8.5.1, they are proposing to remove it as well in this section when the Weighted Vote equals or exceeds 95 percent. Because the requirement in this section was simple majority

⁴⁹ See Operating Agreement, OA Definitions – A – B, ("Active and Significant Business Interest" is a term that shall be used to assess the scope of a Member's PJM membership and shall be based on a Member's activity in the PJM RTO and/or Interchange Energy Markets. A Member's Active and Significant Business Interest shall: 1) be determined relative to the scope of the Member's PJM membership and activity in the PJM RTO and/or Interchange Energy Markets considering, among other things, the Member's public statements and/or regulatory filings regarding its PJM activities; and 2) reflect a substantial contributor to the Member's recent market activity, revenues, costs, investment, and/or earnings when considering the Member and its corporate affiliates' interests within the PJM footprint.").

⁵⁰ See CTOA § 7.3; Tariff § 9.1.

support, language is added to remove that requirement in instances where there is 95 percent support in the Weighted Vote.

C. Section 8.4.3 – Quorum

Under CTOA, Section 8.4.3, 50 percent of both the Weighted and Individual Vote entitled to vote on a matter is required to constitute a quorum permitting the TOA-AC to take action. The PJM TOs are amending Section 8.4.3 to provide greater flexibility in meeting the quorum requirement for the TOA-AC to act. Accordingly, a quorum will be present where either 50 percent of the Weighted and Individual Vote is in attendance or where 95 percent of the Weighted Vote is in attendance.

The proliferation of smaller, non-traditional Transmission Owners could also frustrate the ability of the TOA-AC to act in the future, if an insufficient number of them attend TOA-AC meetings to constitute a quorum. Whether due to competing priorities, limited resources, or the fact that transmission ownership is not the focus of their business, the number of PJM TOs that regularly do not attend TOA-AC meetings has been growing over the past several years and is expected to continue to grow. In fact, some PJM TOs have never attended a TOA-AC meeting.

The PJM TOs believe that difficulties in achieving a quorum should be addressed now, since it may be impossible to make the necessary changes once the problem becomes acute. The PJM TOs, as PJM members and Load Serving Entities, have experienced difficulties in achieving quorums in other PJM bodies in the past. The PJM Reliability Assurance Agreement was once governed by a Reliability Committee that had voting rules similar to the TOA-AC with a concurrent voting system and quorum rules requiring 50 percent of both the Individual and Weighted Vote to be present to take action. In order to streamline PJM's committee process, the Reliability Committee was reorganized under the Operating Agreement with its less stringent sector quorum rules.⁵¹ The PJM senior committees have a much more limited quorum rule permitting action with as few as five members from each sector constituting a quorum.⁵² The PJM Members Committee, which has more than 500 voting members, frequently takes action with barely more than 100 voting

⁵¹ *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,328 (2003). The functions of the Reliability Committee are now exercised by the Markets & Reliability Committee. Operating Agreement § 8.6.1.

⁵² Operating Agreement § 8.3.3.

members present.⁵³ Indeed, even this relatively more tolerant quorum rule reflects adjustments made in order to achieve a quorum.⁵⁴

With this experience in mind, the PJM TOs are proposing to amend the CTOA to provide greater flexibility in meeting the quorum requirement. This will permit the TOA-AC to continue to meet and take necessary action where PJM TOs representing almost all of PJM's transmission assets are present.

D. Section 8.4.4 – Open Meetings

Currently, under the CTOA, in order for the TOA-AC to vote to take action on a matter, the meeting at which such vote is to be taken must be open to all PJM Members and PJM personnel, except as necessary to comply with the Commission's Standards of Conduct rules or to preserve attorney-client or other privileges of the Parties or TOA-AC. The PJM TOs are amending Section 8.4.4 to limit the open meeting requirement to matters subject to the two-thirds voting rule under CTOA, Section 8.5.1. This change would permit votes on matters only requiring a majority vote to be considered and voted on notationally, *i.e.*, through email or other remote electronic voting means. This change, however, would not apply to such items as proposed Tariff changes or amendments to the CTOA, which would still have to be considered and voted on at a TOA-AC meeting.⁵⁵

The amendment to Section 8.4.4 is designed to improve the efficiency of the TOA-AC. Various matters that may come before the TOA-AC requiring only a majority vote are often uncontroversial or the result of substantial working group or subcommittee work among the PJM TOs and PJM, such that all issues that needed to be discussed had already been resolved. These matters may present themselves between TOA-AC meetings or be discussed at a TOA-AC meeting but require additional information or PJM TO consideration before a vote is warranted. One such matter is the PJM-PJM TO allocation of NERC responsibilities, which is developed and updated by a joint PJM-PJM TO subcommittee of

⁵³ For example, the June 23, 2021 PJM Members Committee meeting was attended by 134 voting members. However, in actuality, those 134 members were represented by only 39 individuals. *See* <https://www.pjm.com/-/media/committees-groups/committees/mc/2021/20210728/20210728-consent-agenda-a-draft-minutes-mc-06-23-2021.ashx>.

⁵⁴ Section 8.3.3 of the Operating Agreement was amended in 2011 to reduce the quorum requirement for sectors with more than 20 members to only 10 Voting Members. The rule had required at least one-third of the Voting Members in that sector to be present to constitute a quorum. *See PJM Interconnection, L.L.C.*, Docket No. ER11-3882-000, Operating Agreement Section 8.3.3 Quorum Revision (Jun. 24, 2011).

⁵⁵ The CTOA provides for ten days' notice of meetings of the TOA-AC, absent an emergency or impending deadline. All meeting notices must include "an agenda sufficient to notify the representatives [of the PJM TOs] of the substance of the matters to be considered at the meeting." CTOA § 8.4.1.

the TOA-AC.⁵⁶ In the past, where approval of such items required a vote, but it was neither convenient nor timely to hold the vote at a meeting of the TOA-AC, the TOA-AC has authorized a notational vote by email, with passage once a vote in favor equal to the quorum requirement had been cast, thus guaranteeing passage. The proposed amendment included with this filing would permit the TOA-AC to conduct such votes without an authorizing vote at a meeting of the TOA-AC. This will improve the efficiency and flexibility of the TOA-AC and permit it to address a variety of matters in a timely fashion, while requiring that votes on proposed Tariff changes, CTOA amendments or other significant matters still take place at a formal TOA-AC meeting. Of course, in situations in which further discussion is desired or PJM or a PJM TO requests that a matter be considered at a TOA-AC meeting, the Chair can always call a special meeting or place the matter on the agenda for the next regular TOA-AC meeting.

IV. THE CTOA AMENDMENTS ARE A REASONABLE AND LIMITED REFORM DESIGNED TO ALIGN CTOA VOTING WITH PJM TO RIGHTS UNDER THE FPA

PJM TOs provide the Transmission Facilities that form the foundation of the RTO and its ability to provide open access transmission. PJM TOs that are also zonal Transmission Owners⁵⁷ also have an obligation to their wholesale and retail customers to establish rate designs that fairly allocate the costs of their Transmission Facilities among their customers and other users of the Transmission System.⁵⁸ Additionally, they have a responsibility to their investors to seek adequate compensation for the use of the billions of dollars of Transmission Facilities used by PJM to offer open access transmission. Under the FPA, rates and charges to discharge these obligations are initiated by the public utility, with the Commission's role being to determine whether the rates and charges proposed are just and reasonable.⁵⁹ In PJM, the PJM TOs have voluntarily agreed to share their FPA rights to initiate rates under Section 205 with respect to joint rates and the PJM transmission rate design through the CTOA and the procedures under which the TOA-AC considers and proposes changes to the Tariff.⁶⁰

The CTOA Amendments are a reasonable and limited modification addressing the evolving nature of Transmission Facility ownership in PJM and permitting the PJM TOs

⁵⁶ See PJM TO/TOP Matrix of Shared or Assigned Tasks, (Version 15, Effective April 21, 2021), <http://www.pjm.com/-/media/markets-ops/compliance/pjm-to-top-matrix-version-15-redline-xls.ashx>.

⁵⁷ A zonal Transmission Owner is a PJM TO that is, or is affiliated with, the primary Electric Distributor in the Zone in which it operates, for example, Public Service Electric & Gas in the PSEG Zone or Exelon Corp. in the AEC, BGE, ComEd, DPL, PECO, and PEPCO Zones.

⁵⁸ See Order No. 1000 at PP 495-501, 530-549, 558-565.

⁵⁹ *Atlantic City I*, 295 F. 3d at 10 (“FERC plays ‘an essentially passive and reactive’ role under Section 205.”) (quoting *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 341 (1956)).

⁶⁰ See CTOA §§ 7.2, 7.3; Tariff, Part I, § 9.1; *Pennsylvania-New Jersey-Maryland Interconnection*, 105 FERC ¶ 61,294 (2003), *reh'g denied*, 108 FERC ¶ 61,032 (2004).

responsible for the vast majority of the Transmission System to continue to propose needed and beneficial Tariff changes to protect their assets and their customers. The CTOA Amendments would also better align the CTOA voting rules with individual PJM TO economic stakes in the Transmission System. As noted above, the original concurrent voting system was instituted in a world in which the PJM TOs were of comparable size and few in number. However, given the evolving ISO/RTO landscape, NERC rules and the Commission's Order No. 1000 reforms, the number of PJM TOs has grown beyond anticipated when the Five Percent Rule was originally established. The number of PJM TOs can be expected to continue to grow in the future, increasing the number of Individual Votes and making it difficult to achieve the requisite majorities or even the quorum required to propose Tariff changes to the Commission. At the time the concurrent voting system was adopted in 1997, the largest PJM TO's net assets and hence its Weighted Vote was less than five times the size of the smallest. Today that ratio is over 100,000 to one. This threatens to lead to a situation where the owners of the vast majority of the transmission assets that PJM uses to provide service and who are directly responsible to the vast majority of its transmission customers may be unable to assemble the needed majorities to conduct essential business and file Tariff changes necessary to protect their investments and fairly allocate transmission costs to their customers.

The proposed changes to CTOA voting will address this by providing a backstop to permit the TOA-AC to act where extreme supermajorities of the Weighted Vote support doing so, permitting them to exercise their rights under the FPA to make filings designed to recover and allocate the costs of providing PJM transmission service. Achieving 95% Weighted Vote support will not be an easy requirement – it is not intended to be – and it would necessarily mean that PJM TOs serving customers in almost all, if not all of PJM's 13 states and the District of Columbia support submitting the proposed Tariff change to the Commission for its review. Of course, in any Commission review of filings adopted under the CTOA Amendments, any dissenting Party would be free to state its opposing views in a protest or comments.⁶¹

When presented with issues regarding voting in ISOs/RTOs, the Commission has generally limited its concern to the right to participate in decisions regarding a matter “that directly affects the content of jurisdictional practices.”⁶² It has not intervened in the manner in which those decisions are made, as long as participation is not unreasonably curtailed. For

⁶¹ In fact, the right of any Party and PJM to oppose a PJM TO filing authorized by the TOA-AC is specifically recognized in CTOA, § 7.5.2.

⁶² *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,229 at PP 8-11 (2016) (“PJM CAPS Rehearing Order”) (citing *FERC v. Electric Power Supply Ass'n*, 136 S.Ct. 760, 774 (2016)). In the PJM CAPS Rehearing Order, the Commission affirmed its decision to allow PJM to fund the participation of state consumer advocates in the PJM stakeholder process through a charge under the Tariff, finding that approval of that charge was within its jurisdiction because it was a reasonable expense related to decisions regarding changes to PJM's governing documents. PJM CAPS Rehearing Order at PP 10-11.

example, in *New England Power Pool Participants Committee*⁶³ FERC rejected NEPOOL’s proposal to amend the NEPOOL Agreement to prevent members of the press from becoming NEPOOL members, noting that NEPOOL’s membership already included many types of entities, including end-users and consumer advocates.

The Commission addressed the limits of its “practices” authority over the ISO/RTO voting process in *RTO Insider LLC v. New England Power Pool Participants Committee*.⁶⁴ There, the Commission found that rules prohibiting press and public access to NEPOOL meetings do not directly affect rates, “because they do not affect *who may vote* on NEPOOL proposals.”⁶⁵ In its order, the Commission addressed the ruling by the Court of Appeals in *California Independent System Operator Corp. v. FERC*, which held that the process by which the California Independent System Operator selected its directors was not a practice affecting rates and thus beyond the Commission’s authority to regulate.⁶⁶ The Commission noted that in *CAISO*, the D.C. Circuit expressed concern that permitting the Commission to regulate Board selection practices was an overly expansive reading of the FPA that “could effectively enable Commission scrutiny of an organization’s ‘choice of CEO, COO, and the method of contracting for services, labor, office space, or whatever one might imagine, assuming [the Commission] made the appropriate finding.’”⁶⁷ After noting that the board selection practices under consideration in *CAISO*, which affected CAISO’s governing decisions, were held to be beyond the Commission’s scrutiny, the Commission concluded that practices, such as NEPOOL’s press attendance rules, which “do not affect who may vote on NEPOOL proposals” also do not affect jurisdictional rates.⁶⁸

The CTOA Amendments make no changes to whom may vote on matters coming before the TOA-AC. Accordingly, the CTOA Amendments do not implicate the concerns expressed by the Commission in *NEPOOL*. As before, all PJM TOs with revenue requirements established under the Tariff may vote on proposals to change rates or rate design. The requirement that all entities owning Transmission Facilities integrated with PJM become Parties to the CTOA remains. The definitions and manner of determining Individual and Weighted Votes also is unchanged. Only the threshold for achieving the requisite majority to act is being modified. In short, nothing in the CTOA Amendments changes how an individual PJM TO’s vote is determined – all PJM TOs have their Individual and

⁶³ 166 FERC ¶ 61,062 (2019) (“*NEPOOL*”), *reh’g denied*, 170 FERC ¶ 61,034 (2020) (“*NEPOOL Rehearing Order*”).

⁶⁴ 167 FERC ¶ 61,021 at P 48 (2019) (“*RTO Insider*”), *reh’g denied*, 170 FERC ¶ 61,035 (2020).

⁶⁵ *RTO Insider* at P 48 (emphasis added).

⁶⁶ 372 F. 3d 395, 403 (2004) (“*CAISO*”).

⁶⁷ *RTO Insider* at P 50 (quoting *CAISO* at 403).

⁶⁸ *Id.* at P 51.

Weighted Votes determined on the same basis.⁶⁹ Thus, there is no discrimination among revenue requirements PJM TOs as to their right to vote and/or how their vote is counted.

In the *NEPOOL Rehearing Order*, the Commission noted that its authority over RTO stakeholder practices requires analysis of the specific facts presented in each case.⁷⁰ Here, the instant filing seeks to better align the voting rules under the CTOA through which the PJM TOs propose joint tariff filings to recover and allocate their costs, with the economic stake that each PJM TO has in those filings.⁷¹ The right to develop rates in the first instance and propose them to the Commission is, of course, a right guaranteed to PJM TOs under the FPA.⁷² The CTOA Amendments are consistent with that right while imposing no minimum qualification on the right of any PJM TO to vote or participate in the TOA-AC consideration of issues coming before it, unlike the rules in place in some other RTOs.⁷³ Finally, and most importantly, any proposed Tariff changes that are approved by the TOA-AC may not go into effect without Commission review and acceptance to determine if they are just and reasonable in accordance with the terms of the FPA.

V. EFFECTIVE DATE

The Transmission Owners request that the CTOA Amendments be made effective on January 10, 2022.

VI. CORRESPONDENCE AND COMMUNICATIONS

Correspondence and communications with respect to this filing should be sent to:

⁶⁹ The same metric, net book value, is applied to determine a PJM TOs Weighted Vote, regardless of whether its net book value totals millions or billions of dollars. Similarly, the Affiliate Rule is applied to determine a PJM TO's Individual Vote regardless of size and the number of transmission owning affiliates it has.

⁷⁰ *NEPOOL Rehearing Order* at P 17.

⁷¹ In this sense, the CTOA Amendments are not dissimilar in purpose to the board selection process at issue in *CAISO*. There, the State of California, which established the CAISO, wanted to better align its governing process with the state's stake in the ISO's decisions, which included the ISO's tariff rate and terms and conditions filings.

⁷² *Atlantic City I*, 295 F. 3d at 10 (“Section 205 (and 206) of the Act ‘are simply parts of a single statutory scheme under which all rates are *established initially* by the [public utilities], by contract or otherwise, and all rates are subject to being modified by the Commission upon a finding that they are unlawful.” (quoting *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 341 (1956)) (emphasis in the original).

⁷³ *See supra*, notes 8-10.

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VII. ADDITIONAL INFORMATION REQUIRED UNDER 18 C.F.R. § 35.13(b)

A. Documents Submitted with this Filing

Along with this transmittal letter, the Transmission Owners submit the following exhibits with this filing:

- 1. Exhibit A** – Marked versions of CTOA reflecting the changes proposed herein.
- 2. Exhibit B** – Clean versions of the CTOA reflecting the changes proposed herein.
- 3. Exhibit C** – Examples of Voting and Quorum Under the Existing CTOA Rules and Proposed Amendments.

B. 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,⁷⁴ PJM will post a copy of this filing to the FERC filings section of its internet site, located at the following link: <http://www.pjm.com/documents/ferc-manuals/ferc-filings.aspx> with a specific link to the

⁷⁴ 18 C.F.R. §§ 35.2(e), 385.2010(f)(3).

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 Region⁷⁵ alerting them that this filing has been made by PJM and is available by following such link. If the document is not immediately available by using the referenced link, the document will be available through the referenced link within 24 hours of the filing. Also, a copy of this filing will be available on the Commission's eLibrary website located at the following link: <http://www.ferc.gov/docs-filing/elibrary.asp> in accordance with the Commission's regulations and Order No. 714.

C. Description of and Reason for Rate Change

A detailed description of the rate change is included in Section III, above.

D. Agreement Required for Rate Change

This CTOA Amendments have been authorized pursuant to the Individual and Weighted voting requirements in Section 8.5 of the CTOA.

E. Request for Waivers

To the extent necessary, the PJM TOs request waiver of the requirement to submit the cost-of-service data required by 18 C.F.R. § 35.13. Further, the information submitted with this filing substantially complies with the requirements of Part 35 of the Commission's rules and regulations applicable to filings of this type. The PJM TOs request a waiver of any applicable requirement of Part 35 for which a waiver is not specifically requested, if necessary, in order to permit this filing to become effective as proposed.

⁷⁵ PJM already maintains, updates, and regularly uses email lists for all PJM members and affected state commissions.

VIII. CONCLUSION

For the reasons set forth herein, the PJM TOs respectfully request that the Commission accept these CTOA Amendments without hearing, modification, or condition, and allow these changes to become effective on January 10, 2022, as requested herein.

Respectfully submitted,

/s/ Donald A. Kaplan

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On behalf of the PJM Transmission Owners

Exhibit A

**AMENDMENTS TO THE
CONSOLIDATED TRANSMISSION OWNERS
AGREEMENT
RATE SCHEDULE FERC No. 42**

(Marked Version)

8.4.3 Quorum.

To constitute a quorum with respect to any matter upon which a vote is taken, as of the date of any regular or special meeting, such meeting must be attended by either (i) representatives, alternates, or duly-designated substitute representatives whose Individual Votes constitute more than fifty percent (50%) of the total Individual Votes of Parties entitled to vote on such matter, and whose Weighted Votes constitute more than fifty percent (50%) of the total Weighted Votes of Parties entitled to vote on such matter, or (ii) representatives, alternates, or duly-designated substitute representatives whose Weighted Votes constitute at least ninety five percent (95%) of Parties entitled to vote on such matter. With respect to actions specified in Section 8.5.3, the Individual Votes of Zero Revenue Requirement Parties shall not be counted for purposes of determining the presence of a quorum.

8.4.4 Open Meetings.

Except as provided in this section, all meetings of the Administrative Committee shall be open to entities that are signatories to the Operating Agreement and to personnel of PJM, and all matters subject to Section 8.5.1 upon which the representatives vote shall be open to such entities and to such personnel. Meetings of the Administrative Committee shall be closed to persons or entities other than personnel of PJM if, in the determination of the Chair, doing so is required to comply with FERC's Standards of Conduct For Transmission Providers, Critical Energy Infrastructure Information, or Section 9.15, or shall be closed to all persons or entities other than personnel or representatives of the Parties in order to preserve the attorney-client, attorney work product or other privileges of the Parties or of the Administrative Committee.

8.5.1 Action by Two-thirds Majority.

The following actions of the Administrative Committee shall require the concurrence of: (i) representatives whose combined Individual Votes equal or exceed two-thirds of the total Individual Votes of Parties entitled to vote and cast at a meeting, provided, however, ~~that if the vote receives the concurrence of representatives whose combined Individual Votes exceed one-half of the total Individual Votes cast,~~ the vote shall not fail if voted against by representatives of Parties entitled to vote whose combined Weighted Votes do not exceed five percent (5%) of the total Weighted Votes cast; and (ii) representatives of Parties whose combined Weighted Votes equal or exceed two-thirds of the total Weighted Votes cast at a meeting, provided, however, that if the vote receives the concurrence of representatives whose combined Weighted Votes exceed one-half of the total Weighted Votes cast, the vote shall not fail if voted against by fewer than three Parties entitled to vote:

(a) Amendment or termination of all or any portion of this Agreement, including any schedules, appendices, or attachments hereto, provided that the text of any amendment shall be distributed by overnight courier, facsimile or other reliable electronic means at least thirty (30) days prior to the meeting at which such amendment is to be considered, and provided further that any amendment shall be submitted to FERC for filing and any termination shall not become effective until it shall have been approved by FERC or accepted without suspension or hearing;

(b) Development of comments and recommendations for the Regional Transmission Expansion Plan;

(c) Termination of a Party in accordance with the provisions of Section 9.7 hereof;

(d) Approval of an assignment of this Agreement pursuant to Section 9.5 hereof; and

(e) Approval of changes in or relating to Joint Transmission Rate or the PJM Regional Rate Design, or any provisions governing the recovery of transmission-related costs incurred by the Transmission Owners.

8.5.2 Action by Simple Majority.

Action by the Administrative Committee on any matter other than those specified in Section 8.5.1 shall require: (i) the presence of a quorum at the time of the vote; and (ii) the concurrence of: (a) representatives' whose combined Individual Votes exceed one-half of the total Individual Votes cast at a meeting, however, the vote shall not fail if voted against by representatives of Parties entitled to vote whose combined Weighted Votes do not exceed five percent (5%) of the total Weighted Votes cast; and (b) representatives' whose combined Weighted Votes exceed one-half of the total Weighted Votes cast at a meeting.

Exhibit B

**AMENDMENTS TO THE
CONSOLIDATED TRANSMISSION OWNERS
AGREEMENT
RATE SCHEDULE FERC No. 42**

(Clean Version)

8.4.3 Quorum.

To constitute a quorum with respect to any matter upon which a vote is taken, as of the date of any regular or special meeting, such meeting must be attended by either (i) representatives, alternates, or duly-designated substitute representatives whose Individual Votes constitute more than fifty percent (50%) of the total Individual Votes of Parties entitled to vote on such matter, and whose Weighted Votes constitute more than fifty percent (50%) of the total Weighted Votes of Parties entitled to vote on such matter, or (ii) representatives, alternates, or duly-designated substitute representatives whose Weighted Votes constitute at least ninety five percent (95%) of Parties entitled to vote on such matter. With respect to actions specified in Section 8.5.3, the Individual Votes of Zero Revenue Requirement Parties shall not be counted for purposes of determining the presence of a quorum.

8.4.4 Open Meetings.

Except as provided in this section, all meetings of the Administrative Committee shall be open to entities that are signatories to the Operating Agreement and to personnel of PJM, and all matters subject to Section 8.5.1 upon which the representatives vote shall be open to such entities and to such personnel. Meetings of the Administrative Committee shall be closed to persons or entities other than personnel of PJM if, in the determination of the Chair, doing so is required to comply with FERC's Standards of Conduct For Transmission Providers, Critical Energy Infrastructure Information, or Section 9.15, or shall be closed to all persons or entities other than personnel or representatives of the Parties in order to preserve the attorney-client, attorney work product or other privileges of the Parties or of the Administrative Committee.

8.5.1 Action by Two-thirds Majority.

The following actions of the Administrative Committee shall require the concurrence of: (i) representatives whose combined Individual Votes equal or exceed two-thirds of the total Individual Votes of Parties entitled to vote and cast at a meeting, provided, however, the vote shall not fail if voted against by representatives of Parties entitled to vote whose combined Weighted Votes do not exceed five percent (5%) of the total Weighted Votes cast; and (ii) representatives of Parties whose combined Weighted Votes equal or exceed two-thirds of the total Weighted Votes cast at a meeting, provided, however, that if the vote receives the concurrence of representatives whose combined Weighted Votes exceed one-half of the total Weighted Votes cast, the vote shall not fail if voted against by fewer than three Parties entitled to vote:

(a) Amendment or termination of all or any portion of this Agreement, including any schedules, appendices, or attachments hereto, provided that the text of any amendment shall be distributed by overnight courier, facsimile or other reliable electronic means at least thirty (30) days prior to the meeting at which such amendment is to be considered, and provided further that any amendment shall be submitted to FERC for filing and any termination shall not become effective until it shall have been approved by FERC or accepted without suspension or hearing;

(b) Development of comments and recommendations for the Regional Transmission Expansion Plan;

(c) Termination of a Party in accordance with the provisions of Section 9.7 hereof;

(d) Approval of an assignment of this Agreement pursuant to Section 9.5 hereof; and

(e) Approval of changes in or relating to Joint Transmission Rate or the PJM Regional Rate Design, or any provisions governing the recovery of transmission-related costs incurred by the Transmission Owners.

8.5.2 Action by Simple Majority.

Action by the Administrative Committee on any matter other than those specified in Section 8.5.1 shall require: (i) the presence of a quorum at the time of the vote; and (ii) the concurrence of: (a) representatives' whose combined Individual Votes exceed one-half of the total Individual Votes cast at a meeting, however, the vote shall not fail if voted against by representatives of Parties entitled to vote whose combined Weighted Votes do not exceed five percent (5%) of the total Weighted Votes cast; and (b) representatives' whose combined Weighted Votes exceed one-half of the total Weighted Votes cast at a meeting.

Exhibit C

**EXAMPLES OF VOTING AND QUORUM
UNDER THE EXISTING CTOA RULES
AND PROPOSED AMENDMENTS**

EXHIBIT C

Examples of Voting and Quorum Under the Existing CTOA Rules And Proposed Amendments

Current Voting Rule

Following are several examples of how the CTOA voting system works. There are now 25 unaffiliated PJM TOs, 18 of which are entitled to vote on Tariff changes because their revenue requirements are recovered through Attachment H and Schedule 7 of the Tariff (“Revenue Requirements PJM TOs”). The remaining seven PJM TOs are “Zero Revenue Requirements Parties” and are not entitled to vote on Tariff changes that affect transmission rates or rate design.¹ Assume that the number of unaffiliated PJM TOs has grown to 35 of which 24 are Revenue Requirements PJM TOs. These 24 PJM TOs represent a net transmission investment of \$75 billion, which is the total Weighted Vote. The requisite majority requirements apply to votes among those present and voting (*i.e.*, not abstaining). The issue to be voted on is a change in the PJM transmission rate design.

Example 1: All 24 Revenue Requirements PJM TOs are present and vote. 16 PJM TOs vote in favor, representing at least \$50 billion, two-thirds of the net transmission assets. The proposal passes since there is a two-thirds majority of the Individual and Weighted Votes.

Example 2: Only 22 PJM TOs are present; one present PJM TO abstains. The 21 voting PJM TOs represent \$72 billion in transmission assets. Nineteen PJM TOs vote in favor representing a Weighted Vote of \$39 billion (54%) of the Weighted Vote. Two PJM TOs vote against representing \$33 billion of the Weighted Vote. The proposal passes since only two PJM TOs voted against it, even though there was not a two-thirds Weighted Vote majority.

Example 3: Only 22 PJM TOs are present; one present PJM TO abstains. The 21 voting PJM TOs represent \$72 billion in transmission assets. At least 14 PJM TOs vote in favor, representing at least \$48 billion or two-thirds of the Weighted Vote. The proposal passes since there is a two-thirds majority of the Individual and Weighted Votes.

Example 4: Only 22 PJM TOs are present; one present PJM TO abstains. The 21 voting PJM TOs represent \$72 billion in transmission assets. Eleven PJM TOs vote in favor representing a Weighted Vote of \$67 billion (93%) of the Weighted Vote. Ten PJM TOs vote against representing \$5 billion (7%) of the Weighted Vote. The proposal fails. While there is a two-thirds majority of the Weighted Vote and a simple majority of the Individual Vote, the 93% of the Weighted Vote is not sufficient to overcome the 7% Weighted Vote of the negative Individual Votes.

Example 5: Only 22 PJM TOs are present; one present PJM TO abstains. The 21 voting PJM TOs represent \$72 billion in transmission assets. Eleven PJM TOs vote in favor representing a Weighted Vote of \$69 billion (95.8%) of the Weighted Vote. Ten PJM TOs vote against representing \$3 billion of the Weighted Vote. The proposal passes. While there is not a

¹ CTOA § 8.5.3.

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two-thirds majority of the Individual Vote, there is a simple majority of the Individual Vote and the Weighted Votes against (4.2%) constitutes less than 5% of the Weighted Votes.

Example 6: Only 22 PJM TOs are present; one present PJM TO abstains. The 21 voting PJM TOs represent \$72 billion in transmission assets. Ten PJM TOs vote in favor representing a Weighted Vote of \$68.75 billion (95.5%) of the Weighted Vote. 11 PJM TOs vote against representing \$3.25 billion of the Weighted Vote. The proposal fails. While the Weighted Vote exceeds 95%, there is no majority of the Individual Vote. *This is the only voting outcome among these examples that will be affected by the Proposed CTOA Amendments.*

Proposed CTOA Amendments

Example 6a: Same facts as Example 6. Ten PJM TOs vote in favor representing a Weighted Vote of \$69 billion (95.5%) of the Weighted Vote. 11 PJM TOs vote against representing \$3.25 billion of the Weighted Vote. The proposal passes. While there is no majority of the Individual Vote, the Weighted Votes against (4.5%) constitutes less than 5% of the Weighted Votes.

Current Quorum Rule

Assume the same growth in the number of PJM TOs and weight of their votes as above and the matter to be considered is a Tariff change in which only the 25 Revenue Requirements PJM TOs may vote.

Example 7: The meeting is attended by 13 PJM TOs representing \$72 billion (96%) of the Weighted Vote. A quorum is present since the 50% threshold of both the Individual and Weighted Vote of PJM TOs entitled to vote is present. A vote may be taken.

Example 8: The meeting is attended by 12 PJM TOs representing \$71.5 billion (95.3%) of the Weighted Vote. A quorum is not present. While 95% of the Weighted Vote of PJM TOs entitled to vote is present, the current quorum rule required “more than” 50% of the Individual Vote of PJM TOs entitled to vote is present. No vote may be taken.

Proposed CTOA Amendments

Example 8a: Same facts as Example 8. The meeting is attended by 12 PJM TOs representing \$71.5 billion (95.3%) of the Weighted Vote. A quorum is present. While there is not more than 50% of the Individual Vote of PJM TOs entitled to vote present, more than 95% of their Weighted Vote is present. Thus, a vote may be taken.