



October 9, 2024

VIA eTARIFF

Debbie-Anne A. Reese
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Response to Deficiency Letter, *Duquesne Light Co., PJM Interconnection, L.L.C.*,
Docket No. ER24-2336-001

Dear Acting Secretary Reese:

On June 21, 2024, on behalf of the PJM Transmission Owners (“Transmission Owners”), PJM Interconnection, L.L.C. (“PJM”) filed with the Federal Energy Regulatory Commission (“Commission”) amendments to the Consolidated Transmission Owners Agreement (“CTOA”) by and among the Transmission Owners and PJM.¹ The amendments to the CTOA (“CTOA Amendments”) are primarily directed at transferring to PJM the responsibility to prepare the PJM Regional Transmission Expansion Plan (“RTEP”) pursuant to the PJM Open Access Transmission Tariff (“Tariff”) instead of the Amended and Restated Operating Agreement (“Operating Agreement”), and to provide PJM with the ability to independently propose to the Commission changes to the Regional Transmission Expansion Planning Protocol (“Planning Protocol”) under section 205 of the Federal Power Act (“FPA”). The CTOA Amendments include provisions to protect, support, and enhance PJM’s exercise of section 205 rights over the Planning Protocol, to clarify certain terms and conditions under which the Transmission Owners voluntarily cede these rights to PJM, and to improve the ability of PJM and the Transmission Owners to carry out their respective responsibilities under the CTOA.

¹ *Duquesne Light Co., PJM Interconnection, L.L.C.*, Open Access Transmission Tariff Revisions to the Consolidated Transmission Owners Agreement, Docket No. ER24-2336-000 (filed June 21, 2024) (“CTOA Amendments Filing, Transmittal Letter”). The CTOA is Rate Schedule No. 42 (on file with the Commission). As defined in the CTOA, the term “Parties” used herein means Transmission Owners. The term, “parties,” refers to all CTOA contracting parties, i.e., PJM and the Transmission Owners.

On September 9, 2024, the Commission issued a letter to the Transmission Owners requesting additional information about certain proposed changes in the CTOA Amendments.² The Commission requested additional information about (i) the annual State of the Agreement Meeting (“Annual Meeting”) in new section 2.3, (ii) the addition of the word “replace” in existing section 5.2, (iii) the coordination procedures to address potential overlaps with transmission projects proposed for inclusion in the RTEP and projects planned by Transmission Owners in new sections 4.1.4(b)(ii) and 6.3.4(b)(ii), (iv) the resolution of disputes under new section 7.9, (v) the *Mobile-Sierra* protections in new section 9.16.3, and (vi) the dispute resolution procedures in Attachment B, section B, applicable to a section 7.9 dispute. The Transmission Owners provide herein the additional information requested by the Commission.

The Transmission Owners request that the Commission accept the CTOA Amendments for filing without hearing, modification, or condition and authorize the CTOA Amendments to become effective as of September 20, 2024, the date originally requested in the CTOA Amendments Filing.³ To the extent necessary, the Transmission Owners respectfully request waiver of any regulation necessary for the Commission to accept the CTOA Amendments as filed and grant the requested effective date.

I. PROPOSED ARTICLE 2

Question 1:

Proposed section 2.3 of the Amended CTOA establishes an annual State of the Agreement meeting, which “shall be closed to persons or entities other than personnel of the Parties and PJM as provided in Section 8.4.4.”[footnote omitted] Existing section 8.4.4 of the CTOA states that “all meetings of the Administrative Committee shall be open to entities that are signatories to the Operating Agreement and to personnel of PJM,” except that such meetings shall be closed “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.”[footnote omitted] In explaining your proposed revision to section 2.3, you state in your transmittal that the meeting “is open to all Transmission Owners, but not to all PJM Members or stakeholders that are not PJM Members, because it could involve discussion of restricted transmission function information . . . or CEII information.”[footnote omitted]

Question 1(a):

If the proposed State of the Agreement meeting will be closed to all PJM stakeholders except the PJM TOs and the PJM Board and staff, please support how that structure would be consistent with section 8.4.4, which requires meetings of the Administrative Committee to be open

² *Duquesne Light Co., PJM Interconnection, L.L.C.*, Letter to Duquesne Light Co. from K. Longo, Director of Electric Power Regulation – East, Docket No. ER24-2336-000 (Sept. 9, 2024) (“Deficiency Letter”).

³ CTOA Amendments Filing, Transmittal Letter at 51.

to entities that are signatories to the Operating Agreement and to personnel of PJM unless required by section 8.4.4 to protect certain sensitive, confidential, or privileged information. In your answer, please explain whether the State of the Agreement meeting will be closed to non-Parties solely because of the potential discussion of transmission function information, CEII, or other highly confidential information. Further, please explain whether the State of the Agreement meeting would be closed to non-Parties if transmission function information, CEII, or other highly confidential information are not discussed.

Response to Question 1(a):

The Annual Meeting provided for in proposed section 2.3 is a non-decisional meeting between the Transmission Owners Agreement – Administrative Committee (“TOA-AC”) and the Reliability and Security Committee, a subcommittee of the PJM Board of Managers (“PJM Board”). The purpose of the Annual Meeting is strictly limited to discussions about the implementation of the CTOA and the parties’ performance in accordance with its terms.⁴ It is *not* a formal meeting of the TOA-AC held pursuant to CTOA section 8.4. No action can be taken by the Reliability and Security Committee on behalf of the PJM Board during the Annual Meeting, and no action can be taken by the TOA-AC, as the TOA-AC can only act pursuant to CTOA sections 8.4 and 8.5. The open meetings provisions in section 8.4.4 apply only to formal TOA-AC meetings. Because the Annual Meeting is not a formal TOA-AC meeting, the closed structure of the Annual Meeting is fully consistent with section 8.4.4.

To encourage candid, open, and meaningful discussions about the implementation of the CTOA, attendees of the Annual Meeting must be able to discuss transmission function information, CEII, and other highly confidential information. The likelihood of discussion of highly confidential information requires a closed meeting. Opening and closing the Annual Meeting as transmission function information, CEII, or other highly confidential information is raised would be disruptive and administering such actions would be cumbersome. The closed structure also provides a safeguard against the unintended disclosure of transmission function information, CEII, or other highly confidential information.

It is also reasonable to restrict attendance for a meeting solely about the implementation of the CTOA to the Parties and PJM (signatories to the agreement) personnel responsible for its implementation. In contrast, meetings of the TOA-AC are intended to be open to all PJM Members since formal actions, such as adopting proposed Tariff changes under CTOA section 7.3, may be taken. TOA-AC meetings are thus public and open except in the rare instance a specific topic to be addressed involves CEII or transmission function information.

⁴ CTOA, § 2.3 (as proposed) (providing that the scope of the Annual Meeting is limited to discussions about “the state of the Agreement in achieving the purposes and objectives thereof”).

The reference to section 8.4.4⁵ in proposed section 2.3 is intended to make clear that personnel eligible to attend closed TOA-AC meetings under section 8.4.4 are also eligible to attend closed Annual Meetings under section 2.3. It is appropriate for Transmission Owner personnel permitted to attend closed TOA-AC meetings, as provided in section 8.4.4, to attend closed Annual Meetings because all such personnel are authorized to hear transmission function information, CEII, or other highly confidential transmission information by virtue of having the responsibility to own, operate, and maintain transmission assets that comprise the PJM Region.

Question 1(b):

Please explain whether and to what extent transmission planning would be discussed during these meetings. If transmission planning may be discussed, please explain how proposed section 2.3 of the Amended CTOA complies with the requirement of Order No. 890 that “planning meetings be open to all affected parties including, but not limited to, all transmission and interconnection customers, state commissions and other stakeholders.” [footnote omitted]

Response to Question 1(b):

No transmission planning will be conducted during Annual Meetings. Proposed section 2.3 expressly provides that the scope of the Annual Meeting is limited to discussions about “the state of the Agreement in achieving the purposes and objectives thereof.”⁶ It is not a meeting of the TOA-AC or the full PJM Board.⁷ Its sole purpose is to provide a forum for discussion and education about the implementation of the CTOA. Topics that may be discussed during the Annual Meeting include procedures, assessments on how the parties are implementing their respective obligations under the CTOA, and suggestions for improvements. Transmission planning itself and preparation of the RTEP are outside the scope of the Annual Meeting.

Because the Annual Meeting is an informational meeting about contractual implementation and not transmission planning, it does not fall within the scope of transmission planning activities that the Commission’s regulations require to be open to all “affected parties,”⁸ and the closed

⁵ CTOA section 8.4.4 provides, in relevant part:

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.

CTOA, § 8.4.4.

⁶ CTOA, § 2.3 (as proposed).

⁷ Only a formal meeting of the PJM Board can approve the RTEP. Operating Agreement, Sched. 6, § 1.6.

⁸ *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, at P 460, *order on reh’g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (requiring that “transmission planning meetings

structure of the Annual Meeting fully aligns with Order No. 890's openness and transparency principles. As the Commission has explained, the planning-related reforms adopted in Order No. 890 were intended to "facilitate tariff compliance by opening up the transmission provider's decisional process, providing much needed transparency in the area of transmission planning."⁹ As noted above, unlike TOA-AC and PJM Board meetings, no action can be taken at the Annual Meeting. No voting and no rule development will take place and no substantive transmission planning proposals will be designed or discussed. Because no action can be taken at any Annual Meeting, as their purpose is strictly limited in scope to implementation of the CTOA, these meetings are outside the scope of PJM's "decisional process," and it is reasonable, and fully consistent with Order No. 890, to restrict attendance for such meetings in order to assure a free and robust discussion among the parties.¹⁰

Order No. 890 requires "transmission planning meetings [to] be open to all affected parties."¹¹ Because the Annual Meeting is not a transmission planning meeting, Order No. 890's openness principle is not implicated. With respect to transparency, Order No. 890 requires "transmission providers to disclose to all customers and other stakeholders the basic criteria, assumptions, and data that underlie their transmission plans. . . . and to make available the basic methodology, criteria, and processes they use to develop their transmission plans."¹² There will be no transmission planning conducted during the Annual Meeting and the required disclosures will be made available in the Planning Protocol processes by which transmission planning is actually accomplished.¹³ The Commission has already approved similar non-decisional closed meetings with the PJM Board,¹⁴ and requiring the Annual Meeting to be open to all would be inconsistent with those prior decisions.

be open to all affected parties"). Even with respect to transmission planning meetings, the Commission has found that it may nevertheless "be appropriate in certain circumstances . . . to limit participation to a relevant subset of [affected parties]." *Id.*

⁹ Order No. 890-A at P 179.

¹⁰ See Order No. 890-A at P 252 (noting that Order No. 890 "established that an open, coordinated, and transparent process be adopted to govern the *decision-making* process" with respect to the transmission planning process) (emphasis added).

¹¹ Order No. 890 at P 460.

¹² Order No. 890 at P 471.

¹³ Such meetings in PJM are conducted under the Operating Agreement, Schedule 6 and PJM Tariff, Attachment M-3.

¹⁴ See, e.g., *Pub. Serv. Comm'n of W. Va. v. PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,163, at PP 79, 85 (2014) (rejecting challenges to the exclusion of non-PJM Members from meetings of the PJM Liaison Committee with the PJM Board). The IMM has closed-door meetings with the PJM Board, as required by Attachment M to the PJM Tariff. PJM Tariff, Attachment M, § III(D)(2) ("The PJM Board and the [IMM] shall meet and confer from time to time on matters relevant to the discharge of the PJM Board's and the Market Monitoring Unit's duties under [PJM's Market Monitoring] Plan."). These meetings are not open to participation by PJM Members, employees, or stakeholders, and enable the IMM to communicate directly with the PJM Board on matters relevant to its duties.

PJM will publish an agenda and meeting minutes for each Annual Meeting so that there will be transparency with respect to the discussion items. The parties' agreement to publish an agenda in advance of each Annual Meeting and to make meeting minutes available after each meeting provides appropriate transparency into their perspectives about the implementation of the CTOA that goes beyond the requirements of Order No 890. PJM will continue to administer an open, transparent, and coordinated transmission planning process under proposed Schedule 19 of the PJM Tariff. Finally, any change to the Planning Protocol proposed by PJM under Section 205 would require consultation with all PJM Members under PJM Tariff Part I, section 9.2 and CTOA section 7.5.

Question 1(c):

Please explain what mechanisms, if any, such as confidentiality agreements and password-protected access to information, would be used to manage confidentiality and CEII concerns in the State of the Agreement meeting. [footnote omitted]

Response to Question 1(c):

The Transmission Owners will comply fully with the Commission's and PJM's processes for protecting CEII, transmission function information, and other confidential materials, as they currently do. First, attendance will be limited to personnel qualified to receive transmission function information, CEII, or other highly confidential transmission information, and thus fully aware of their responsibilities to protect such information. Notice of the Annual Meeting will remind participants of this requirement and attendance will be recorded. Second, any documents created either in preparation for the meeting or in the meeting will be treated in accordance with PJM's rules for handling such information found in PJM Manual 14B, section 1A.3.2.¹⁵

II. PROPOSED ARTICLE 5

Question 2: *You propose to add the word "replace" to existing section 5.2 of the CTOA. [footnote omitted] You state that the addition of this word merely incorporates now-settled law that the PJM TOs retained the right to replace their facilities. [footnote omitted]*

The OPSI Advisory Committee also regularly meets on its own with the PJM Board. *See Org. of PJM States, Inc. v. PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,257, at P 18 n.15 (2008) (describing functions of the OPSI Advisory Committee).

¹⁵ PJM Manual 14B, section 1A.3.2, states in relevant part: "A recipient of PJM CEII shall maintain it in a secure place. Access to PJM CEII shall be limited to the recipient and other recipients of the identical CEII. Recipients may make copies of PJM CEII, but such copies are PJM CEII and subject to the same required handling. Recipient may make notes regarding the PJM CEII, but those notes shall be treated as PJM CEII notes if they contain CEII or were derived from PJM CEII."

Question 2(a):

Please explain how the word “replace” is defined in this context.

Response to Question 2(a):

Section 5.2 of the CTOA enumerates the authorities the Transmission Owners retain under that section. Like the existing terms “build, finance, own, acquire, sell, dispose, retire, merge or otherwise transfer or convey” in section 5.2, the term “replace” is not explicitly defined in the CTOA. The term “replace” in section 5.2 is intended to reflect and be consistent with the D.C. Circuit’s holding in *American Municipal Power, Inc. v. FERC* that the rights to retire and build assets encompass the right to replace existing transmission facilities as they are retired.¹⁶ Any lingering question as to the meaning of the word “replace” can be resolved by looking to that case and the Commission decisions it affirmed.

As the D.C. Circuit held, the Transmission Owners retain all statutory rights not expressly and voluntarily transferred.¹⁷ These include any planning rights not transferred to PJM as “there is simply no denying [the Transmission Owners’] section 205 rights.”¹⁸ The CTOA recognizes this fundamental basis of the relationship between the Transmission Owners and PJM by expressly providing in section 5.6 that the Transmission Owners retain all rights not “specifically transferred” to PJM. The right to replace assets has not been “specifically transferred” to PJM, and the proposed amendment to section 5.2 simply clarifies this mutual understanding confirmed by the court.

The proposed amendment to section 5.2 does not change the fact that any replacement of assets is subject to the Commission-approved procedures in Attachment M-3 to the PJM Tariff.¹⁹ It also does not alter PJM’s existing authority to proceed with an overlapping proposed regional project. The proposed amendment merely removes possible ambiguity by adding the word “replace” to avoid any uncertainty, and perhaps further litigation, on the matter.

Question 3: *Proposed section 5.5.2 of the Amended CTOA states: “The Parties to this Agreement shall have the exclusive right to seek enforcement of the obligations of PJM to the Parties as set forth in Article 6 of this Agreement.” [footnote omitted]*

Question 3(a):

Please explain the purpose of and provide support for this new provision.

¹⁶ *Am. Mun. Power, Inc. v. FERC*, 86 F.4th 922, 932-34 (2023).

¹⁷ *Id.* at 927 (“Transmission owners expressly retain all ‘[r]ights not specifically transferred . . . to PJM pursuant to [the Owners] Agreement or any other agreement.’”) (citing CTOA, § 5.6).

¹⁸ *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 11 (D.C. Cir. 2002) (“*Atlantic City*”).

¹⁹ PJM Tariff, Attach. M-3.

Response to Question 3(a):

Section 6.2 of the Commission-approved CTOA already provides that PJM has the “right to seek enforcement of the obligations *of any Party* [*i.e.*, any Transmission Owner] to PJM under Article 6 of this Agreement.”²⁰ In previously approving existing section 9.2,²¹ the Commission has already agreed to the no-third-party beneficiary principle reflected in the proposed section 5.5.2 and the amendment to section 6.2. The proposed amendments add the word “exclusive” to this provision, giving PJM the “exclusive right” to do so, to confirm the no-third-party beneficiary principle.

The addition of CTOA section 5.5.2 clarifies that the counterparty to the CTOA (*i.e.*, the Transmission Owners) likewise have “the exclusive right to seek enforcement of the obligations *of PJM* to the Parties as set forth in Article 6 of this Agreement.”²² Section 5.5.2 provides symmetry between PJM and the Transmission Owners as to their ability to enforce each other’s obligations under the CTOA and reflects PJM’s and the Transmission Owners’ agreement that the right to enforce the CTOA’s obligations is exclusive to the counterparties to the CTOA, *i.e.*, PJM and the Transmission Owners.

The CTOA establishes rights and responsibilities between and among PJM and the Transmission Owners and provides to each of them the ability to enforce those rights and responsibilities. PJM Members, acting individually or through the Members Committee, are not counterparties to the CTOA. Proposed CTOA section 5.5.2 reflects this reality already in the CTOA, and previously accepted by the Commission, and now applies it evenhandedly between the parties to the CTOA.

Question 3(b):

Please explain whether this new provision would limit the Commission or interested parties from acting under section 206 to enforce the CTOA.

Response to Question 3(b):

Section 5.5.2 has no effect on the Commission or any interested party’s ability to act under FPA section 206. Such rights are statutory and cannot be reduced by contract.

As noted above in response to Question 3(a), the Commission previously approved the no-third-party beneficiary principle reflected in proposed section 5.5.2 when it approved section 9.2. Together, sections 5.5.2 and 6.2 reflect the counterparties’ understanding that they should be the ones enforcing the obligations and commitments made to each other in the CTOA.

²⁰ CTOA, § 6.2 (emphasis added).

²¹ CTOA section 9.2 is proposed to be amended to explicitly include PJM, since under the CTOA, the definition of “Party” is limited to Transmission Owners.

²² CTOA (as proposed), § 5.5.2 (emphasis added).

That said, the right of PJM Members or interested persons to file a complaint as provided in sections 7.5(v) and 7.6.6 and Attachment B, section B(v) and(vi) is not affected by section 5.5.2. Any interested third-party remains free to file a complaint under section 206, as this section cannot take away any interested party's right to exercise their rights under section 206.²³ Any dispute arising pursuant to PJM's right under section 6.2 or the Transmission Owners' right under section 5.5.2 to enforce the CTOA could thus be resolved by the Commission acting pursuant to FPA section 206. The Commission could also act on its own motion under section 206. Section 5.5.2 does not reduce FPA section 206 rights or limit the Commission's ability to act under section 206.

III. PROPOSED ARTICLES 4 & 6

Question 4: *Proposed sections 4.1.4(b)(ii) and 6.3.4(b)(ii) of the Amended CTOA state:*

Where Transmission Facilities planned by a Party may overlap with Transmission Facilities proposed to be included in the Regional Transmission Expansion Plan such that the Transmission Facilities proposed to be included in the Regional Transmission Expansion Plan would more efficiently or cost effectively address the need for which the Party's Transmission Facilities are planned, PJM shall consult with the Party to determine if the need for which the Party's Transmission Facilities are planned will be addressed. If the Party determines that such need will not be addressed and that it must continue to plan the Party's Transmission Facilities, it shall document to PJM and the relevant PJM transmission planning committee the rationale supporting its determination.[footnote omitted]

You explain that these sections "codify a coordination process in the CTOA to address potential overlaps involving RTEP projects and Transmission Owners planned projects," and that the "new sections do not supplant, and are consistent with, the more detailed processes set out in the existing PJM Tariff and PJM Manual provisions,"[footnote omitted] citing section (d)(2) of Attachment M-3. That section of Attachment M-3, however, relates to only projects addressing "[End-of-Life] Needs," whereas proposed sections 4.1.4(b)(ii) and 6.3.4(b)(ii) of the Amended CTOA appear to address Transmission Facilities planned by a Party for any reason, including Supplemental Projects that expand or enhance the system.

Question 4(a):

Please explain when in the local and/or regional transmission planning process the consultation required under proposed sections 4.1.4(b)(ii) and 6.3.4(b)(ii) of the Amended CTOA would occur, particularly in relation to the required stakeholder review.

Response to Question 4(a):

Proposed sections 4.1.4(b)(ii) and 6.3.4(b)(ii) adopt in the CTOA the principles of coordination between RTEP projects planned by PJM and Attachment M-3 Projects planned by

²³ See CTOA §§ 7.6.6 and Attachment B, Section B(vi).

the Transmission Owners currently described in detail in Attachment M-3, section (d)(2) and PJM Manual 14B, section 1.4.2.2.²⁴ Consistent with the proposed CTOA Amendments, Attachment M-3 requires that, after consultation with the Transmission Owner, PJM determines that an RTEP project may also address a projected End-Of-Life (“EOL”) Need.²⁵ If the Transmission Owner disagrees with PJM’s determination that its EOL Need can be addressed by an RTEP project and instead determines that it needs to proceed with the proposed EOL project as planned, the Transmission Owner must provide documentation to PJM and make a presentation to all PJM stakeholders at an open PJM stakeholder meeting on the rationale supporting its determination.²⁶

PJM Manual 14B section 1.4.2.2 likewise provides that, if PJM identifies a potential overlap between a possible RTEP Project and a Supplemental Need, PJM will discuss the overlap with the relevant Transmission Owner and other stakeholders.²⁷ If the Transmission Owner determines that the Supplemental Need will not be met by the RTEP Project, the Transmission Owner will provide documentation to PJM and the stakeholders on the rationale supporting its determination.²⁸ This is the principle adopted in the proposed CTOA Amendments, which thus do not change, expand, or supplant the processes required by Attachment M-3 and PJM Manual 14B. The CTOA Amendments confirm that this provision for addressing incidents of potential overlaps, already required by Attachment M-3 and PJM Manual 14B, section 1.4.2.2, is also embedded in the foundational CTOA and will continue going forward. Notably, the intervenors that have taken issue with these provisions, largely through misconstruing them, have not pointed to any evidence that the existing process upon which they are modeled has ever harmed or interfered with PJM’s regional planning.

Question 4(b):

Please explain what would happen if a Transmission Owner determined that the need supporting its proposed Transmission Facilities will not be addressed by Transmission Facilities included in the RTEP, despite a PJM finding that such a need would be met by Transmission Projects included in the RTEP. Under proposed sections 4.1.4(b)(ii) and 6.3.4(b)(ii), would PJM have to revise the Transmission Projects identified in the RTEP to accommodate the Party’s Transmission Project? If so, please explain how the incremental costs that result would be allocated and whether this would result in less cost effective or efficient solutions to transmission needs.

²⁴ See CTOA Amendments Filing, Transmittal Letter at 22 (citing both PJM Tariff, Attach. M-3, § (d)(2) and PJM Manual 14B, § 1.4.2.2). Under Attachment M-3, section (d)(2), the Transmission Owner confirms that the EOL Need still exists and consults with PJM regarding whether a single solution could address the EOL Need and the PJM Planning Criteria Need. PJM then determines whether an RTEP Project would more efficiently and cost effectively address both needs.

²⁵ PJM Tariff, Attach. M-3, § (d)(2)(i).

²⁶ PJM Tariff, Attach. M-3, § (d)(2)(ii).

²⁷ PJM Manual 14B, § 1.4.2.2.

²⁸ *Id.*

Response to Question 4(b):

The question requires some clarification: PJM does not make a determination that Transmission Projects included in the RTEP can meet needs identified by Transmission Owners. Instead, it identifies overlaps between RTEP projects and Attachment M-3 projects. The Transmission Owner must determine if the RTEP project also solves the Attachment M-3 need, since it is the Transmission Owner that has the responsibility to identify and address that need.

Under the processes currently in place, and the proposed CTOA Amendments, if a Transmission Owner ultimately concludes its identified local need will not be addressed by an RTEP project and it must proceed with its local project, the Transmission Owner is required to document the rationale for that determination. Nothing requires PJM to revise its proposed RTEP project and the Transmission Owners would not expect PJM to revise its proposed RTEP project.

As explained above in response to Question 4(a), proposed sections 4.1.4(b)(ii) and 6.3.4(b)(ii) do not change, expand, or supplant the existing processes for coordination between PJM and the relevant Transmission Owner required by Attachment M-3 and PJM Manual 14B. Each Transmission Owner performs local transmission planning in coordination with distribution planning to design and operate the zonal system in an efficient, cost-effective manner and in accordance with Good Utility Practice. Local transmission planning is conducted based upon each Transmission Owner's expertise and experience concerning their system, local needs, and the specific and unique characteristics of each zone's system, load, and other local considerations.

If both PJM and the Transmission Owner proceed with their proposed projects, the cost of each would be allocated according to existing processes for each in the PJM Tariff. The cost of the PJM-planned RTEP project would be allocated based on the approved method for the project type in Schedule 12 of the PJM Tariff (e.g., if a Regional Reliability Project, 50 percent on a load-ratio share basis and 50 percent in accordance with the distribution factor analysis).²⁹ The cost of the Transmission Owner-planned EOL or Supplemental Project would be allocated to that Transmission Owner's local zone.³⁰ Interested parties retain the ability to raise concerns with these projects (including whether they result in less cost-effective or less efficient solutions to transmission needs) through the Transmission Owner's formula rate process and, if necessary, a section 206 complaint process. They may also oppose siting the local project through the state siting process, where applicable.

Question 5: *You state that the proposed revisions to section 4.1.4 of the Amended CTOA reflect that PJM has the responsibility to prepare the RTEP in accordance with PJM Tariff Schedule 19 and PJM Tariff Attachment M-3, and not in accordance with the Operating Agreement, to incorporate the transfer of the RTEP from the Operating Agreement to the Tariff.[footnote omitted]*

²⁹ PJM Tariff, Sched. 12, § (b)(i)(A).

³⁰ *Id.* at Sched. 12, § (a)(iii).

Question 5(a):

Please explain whether PJM would be able to make changes to or include provisions in its Tariff regarding the RTEP outside of Schedule 19 and Attachment M-3 without obtaining authorization of the PJM TOs pursuant to the CTOA.

Response to Question 5(a):

PJM has exclusive and unilateral section 205 filing rights over the Terms and Conditions of the PJM Tariff,³¹ including items such as the terms of transmission service, interconnection, and other functions not involving the section 205 filing rights retained by the Transmission Owners.³² As a result of the CTOA Amendments, PJM will be able to propose to the Commission changes or additions to the Tariff Terms and Conditions that affect the RTEP, including outside of Schedule 19, without obtaining authorization of the Transmission Owners. Indeed, the PJM Tariff already includes provisions that affect the RTEP, including PJM's interconnection process and provisions related to network upgrades, that are subject to PJM's exclusive filing rights.³³ The CTOA Amendments are primarily directed at putting all RTEP-related provisions in one place – the PJM Tariff – where PJM has the ability to propose changes and additions to those processes. It is not reasonable to subject the Planning Protocol to two different planning regimes, one in the Tariff and the other in the Operating Agreement. However, until the CTOA Amendments are accepted, PJM will not be able to prepare the RTEP itself pursuant to a Tariff schedule, rather than, as currently specified, a schedule to the Operating Agreement.

IV. PROPOSED ARTICLE 7

Question 6: *Proposed section 7.9 of the Amended CTOA states:*

Neither the Parties nor PJM shall make any filing under Section 205 of the Federal Power Act that contravenes Articles 2, 4, 5, 6, 7 or Attachment B of the Agreement or seeks to modify the terms of said Articles, unless PJM consents to such filing by the Parties or the Parties, acting through a vote pursuant to Section 8.5.1, consent to such filing by PJM. If either PJM or the Parties seek to revise or modify the PJM Tariff, including the Regional Transmission Expansion Planning Protocol, under Federal Power Act Section 205, and PJM or a Party believes that such revisions or modifications contravene any part of

³¹ CTOA Amendments Filing, Transmittal Letter at 9 (explaining that the *Atlantic City Settlement* provides PJM with the “exclusive and unilateral” right to file changes to Tariff Terms and Conditions).

³² To the extent Question 5(a) suggests that PJM will be able to propose changes or additions to Attachment M-3 without obtaining authorization of the Transmission Owners, the Transmission Owners disagree with that suggestion. Attachment M-3 “may only be modified under section 205 of the [FPA] if the proposed modification has been authorized by the PJM Transmission Owners Agreement-Administrative Committee in accordance with section 8.5 of the [CTOA].” PJM Tariff, Attach. M-3, § (e). *See also Am. Mun. Power*, 86 F.4th at 933-34 (holding in the context of Attachment M-3 that PJM has only the powers voluntarily transferred to it by the TOs). This is also true of Attachments H, M-2, M-4, and other sections where the PJM Transmission Owners retain § 205 filing rights.

³³ PJM Tariff, Part I § 9.2(a).

Articles 2, 4, 5, 6 or 7 or Attachment B of the Agreement, PJM and such Party or Parties shall follow the dispute resolution procedures set forth in Section 9.19.[footnote omitted]

The first sentence of this proposed section references “any filing under Section 205 of the Federal Power Act that contravenes Articles 2, 4, 5, 6, 7 or Attachment B of the [CTOA].”

Question 6(a):

Please explain why it is just and reasonable to prohibit PJM or the PJM TOs from submitting any FPA section 205 filing considering that the Commission has determined that the onus of determining the legality of a filing falls on the Commission.[footnote omitted]

Response to Question 6(a):

Agreement to a binding dispute resolution process does not “prohibit” a Party from exercising its rights under section 205 or any other provision of the FPA. Proposed Section 7.9 (as well as Section 7.6, which the Commission has already accepted) is a voluntary agreement to resolve disputes without resorting to litigation. By its terms, section 7.9 is expressly limited in scope and applies only to a dispute arising under certain provisions of the CTOA that address the Transmission Owners’ voluntary cession of rights to PJM and the Transmission Owners’ obligations to PJM under the CTOA.³⁴ By contrast, if a dispute between the parties were to arise under the Tariff or the Operating Agreement that does not involve whether a right was transferred or retained under the CTOA, the applicable dispute resolution provisions set forth in the Tariff or Operating Agreement would apply.

The CTOA’s fundamental purpose is to allow the Transmission Owners to voluntarily transfer to PJM specific rights to make filings and perform Transmission Owner basic functions, such as planning and operations, under the FPA, and to establish responsibilities between the Transmission Owners and PJM. It follows that a dispute as to whether a proposed filing falls within the rights or functions transferred under the CTOA is a dispute under the CTOA. Attachment B, section B sets out the process for resolving such disputes that arise under section 7.9 of the CTOA. Because the Transmission Owners have voluntarily ceded certain rights to PJM and agreed to undertake certain obligations, the parties have also voluntarily agreed to a procedure designed to resolve any disputes that may arise as to what rights have or have not been ceded.

The Attachment B, section B procedure – which tracks the procedure the Commission has approved in section 7.6.4 of the CTOA for disputes under section 7.6³⁵ – is designed to conclude

³⁴ As explained in the Transmittal Letter, the process applies to a proposed section 205 filing that contravenes Articles 2, 4, 5, 6, 7, or Attachment B (the “Protected Provisions”) in the CTOA. This provision is directed at situations in which either the Transmission Owners or PJM assert that a proposed section 205 filing would contravene the CTOA. CTOA Amendments Filing, Transmittal Letter at 21.

³⁵ See *Pennsylvania-New Jersey-Maryland Interconnection*, 105 FERC ¶ 61,294 (2003) (approving *Atlantic City Settlement* subject to modification) (“*Atlantic City Settlement Order*”); *Pennsylvania-New Jersey-Maryland Interconnection*, 108 FERC ¶ 61,033 (2004) (accepting modified *Settlement Agreement*) (“*Atlantic City Settlement Modification Order*”).

before any filing is made with the Commission, similar to dispute resolution provisions in many standard contracts designed to resolve potential disputes before they go to litigation. It is consistent with the Commission's policy encouraging settlements,³⁶ dispute resolution provisions in jurisdictional agreements,³⁷ and the Commission's prior approval of the procedure with respect to disputes arising under section 7.6.³⁸ Further, as the Commission's prior approval of section 7.6.4 demonstrates, there is no derogation of the Commission's authority to determine the legality of a filing.³⁹ Finally, section 7.9 does not prevent the disputing parties or any other interested party from presenting the matter to the Commission under FPA section 206 and the Commission can initiate its own section 206 investigation at any time.⁴⁰

Question 6(b):

Please explain whether this language would inhibit PJM's right to make section 205 filings regarding the Operating Agreement or the entirety of the Tariff; if so, please provide support for this provision.

Response to Question 6(b):

As explained in the Answer to Question 6(a), by its terms, CTOA section 7.9 applies only to disputes arising under the listed provisions of the CTOA that address the Transmission Owners' voluntary cession of rights and functions to PJM or their retention by the Transmission Owners,

³⁶ See *Fla. Power & Light Co.*, 175 FERC ¶ 61,024, at P 6 (2021) ("Commission policy favors settlements, as they provide parties with certainty, reduce litigation costs, and permit parties to reach reasonable compromise in resolving difficult issues."); *San Diego Gas & Elec. Co.*, 122 FERC ¶ 61,009, at P 13 (2008) ("The Commission strongly favors settlements, particularly in cases that are highly contested and complex.").

³⁷ See, e.g., *Cal. Indep. Sys. Operator, Corp.*, 94 FERC ¶ 61,141, at 61,538 (2001) (finding that use of arbitration as initial process in resolving disagreements is consistent with the FPA and the goals and policies of the Commission and that such provisions do not limit the Commission's ability to carry out its statutory responsibilities); *Ariz. Pub. Serv. Co.*, 78 FERC ¶ 61,083, at 61,304-05 (1997) (accepting dispute resolution provisions requiring the use of the regional transmission group's ("RTG's") dispute resolution procedures when both parties are members of the RTG and noting that the provisions permit appeal to the Commission); *Allegheny Power Sys.*, 77 FERC ¶ 61,266, at 62,104 (1996) (accepting revised dispute resolution procedures of the *pro forma* tariff to note that members of Commission-approved RTGs are subject to RTG dispute resolution procedures); *N.W. Reg'l Transmission Assoc.*, 71 FERC ¶ 61,397, at 62,562 (1995) ("AFPA argues that requiring members to go through the dispute resolution procedures under the Governing Agreement to resolve disagreements about the amount of capacity available, in the first instance, and to file a section 206 complaint, in the second instance, would unduly delay transmission access and unfairly place the burden of proof on the customer. We disagree. The Commission encouraged RTGs to develop dispute resolution procedures in order to reduce time-consuming and expensive litigation before the Commission.").

³⁸ *Atlantic City Settlement Modification Order* at PP 3, 5.

³⁹ See *id.*

⁴⁰ CTOA Amendments Filings, Transmittal Letter at 21; *Duquesne Light Co., PJM Interconnection, L.L.C.*, Answer of PJM Transmission Owners, Docket Nos. ER24-2336-000, ER24-2338-000 and EL24-119-000, at 25 (filed Aug. 15, 2024).

as well as the Transmission Owners' responsibilities to PJM. It does not "inhibit" PJM's rights to make a valid section 205 filing consistent with the CTOA. It is simply a means to resolve a dispute as to whether PJM's proposed filing or the Transmission Owners' proposed filing is consistent with the CTOA without resorting to litigation.

Section 7.9 would not have any effect on a proposed section 205 filing of PJM to change the Operating Agreement or the entirety of the Tariff, so long as the proposed filing is not determined by the Neutral Party to contravene Articles 2, 4, 5, 6, 7, or Attachment B in the CTOA, or seek to modify the terms of those provisions. If, however, the Neutral Party determines that a proposed filing by PJM would violate a Protected Provision, then PJM cannot file under section 205. PJM may file under section 206. The same holds true for the Transmission Owners' proposed filing: If the Neutral Party finds that the Transmission Owners' proposed filing is not permitted to be filed under section 205, the Transmission Owners could still present that issue to the Commission under section 206.

Question 7: *Existing section 7.5.1(ii) of the CTOA states:*

PJM may file an FPA section 205 filing with less than a full seven (7) day advance consultation in circumstances where imminent harm to system reliability or imminent severe economic harm to electric consumers requires a prompt Section 205 filing; provided that PJM shall provide as much advance notice and consultation with the Transmission Owners, through the Administrative Committee, and the PJM Members Committee as is practicable in such circumstances, and no such emergency filing shall be made with less than 24 hours advance notice.[footnote omitted]

Question 7(a):

Please explain whether proposed section 7.9 would prevent PJM from making an FPA section 205 filing in circumstances where imminent harm to system reliability or imminent severe economic harm to electric consumers requires a prompt FPA section 205 filing if any Party to the CTOA contends that such an FPA section 205 filing would contravene Articles 2, 4, 5, 6, 7, or Attachment B of the CTOA.

Response to Question 7(a):

Any dispute brought under section 7.9 would be governed by the procedures in Attachment B, section B, and those procedures would **not** prevent PJM from making an emergency section 205 filing with 24-hours advance notice under section 7.5.1(ii). Section 7.5.1(ii) provides that PJM can make an emergency filing "in circumstances where imminent harm to system reliability or imminent severe economic harm to electric consumers requires a prompt Section 205 filing."⁴¹

For more than two decades, the parties have understood and agreed that the CTOA dispute procedures would never delay an emergency filing. Since the Commission approved the *Atlantic City Settlement*, PJM has had the exclusive and unilateral right to make section 205 filings "[i]n

⁴¹ CTOA, § 7.5.1(ii).

the case of certain emergencies requiring immediate action”⁴² and that right may not be changed absent a showing that it is contrary to the public interest.⁴³ CTOA section 7.5.1(ii) reflects the emergency filing procedures agreed upon in the *Atlantic City* Settlement.⁴⁴ The *Atlantic City* Settlement also established the process for resolution of disputes, which is set out in section 7.6 reflecting the *Atlantic City* Settlement’s dispute resolution procedure.⁴⁵ As described below, section 7.6 and the Attachment B, section B dispute resolution procedures are intended to operate in the same manner, so a dispute under section 7.9 also would **not** prevent PJM from making an emergency section 205 filing under section 7.5.1(ii).

⁴² See Settlement Agreement, Docket No. OA97-261-006, *et al.*, § 3.2 (filed Oct. 3, 2003), as modified, Modification of Settlement Agreement, Docket No. OA97-261-009, *et al.* (filed Jan. 20, 2004 and corrected Jan. 23, 2004) (“*Atlantic City* Settlement”). Section 3.2 of the *Atlantic City* Settlement states in relevant part:

PJM shall have an obligation to consult with the Transmission Owners and PJM Members Committee beginning no less than seven (7) days in advance of any such Section 205 filing, but the Transmission Owners and the PJM Members Committee shall not have the right to veto or delay any such Section 205 filing; provided that, in the case of a disagreement between PJM and the Transmission Owners with respect to which of them has exclusive filing rights in connection with a particular proposed filing, PJM shall delay such filing at the request of the Transmission Owners for the purpose of resolving said disagreement in accordance with procedures specified in this Settlement Agreement. In the case of certain emergencies requiring immediate action, PJM shall not be required to provide 7 days advance notice but shall provide as much advance notice as is practicable in the circumstances, and in no circumstances may PJM make an emergency Section 205 filing without providing at least 24 hours advance notice to the Transmission Owners.

Id.; *id.* § 4.2(B) (revising section 5.2.1(b) of the Transmission Owners Agreement to provide that “PJM may file with less than a full 7 day advance consultation in circumstances where imminent harm to system reliability or imminent severe economic harm to electric consumers requires a prompt Section 205 filing; provided that PJM shall provide as much advance notice and consultation with the Transmission Owners and the PJM Members Committee as is practicable in such circumstances, and no such emergency filing shall be made with less than 24 hours advance notice.”); *Pennsylvania-New Jersey-Maryland Interconnection*, 105 FERC ¶ 61,294, at P 13 n.16 (2003) (“*Atlantic City* Settlement Order”) (noting that “either PJM or the TOs would be authorized to make emergency filings in circumstances where imminent harm to system reliability or imminent severe economic harm to electric consumers requires them to do so”); *Pennsylvania-New Jersey-Maryland Interconnection*, 108 FERC ¶ 61,033 (2004) (“*Atlantic City* Settlement Modification Order”).

⁴³ *Atlantic City* Settlement, § 4.5. See also PJM Tariff, § 9.4.

⁴⁴ Compare CTOA, § 7.5.1(ii), with *Atlantic City* Settlement, § 4.2(B); see also *Atlantic City* Settlement, § 3.2; *Atlantic City* Settlement Order at P 13 n.16 (noting that “either PJM or the TOs would be authorized to make emergency filings in circumstances where imminent harm to system reliability or imminent severe economic harm to electric consumers requires them to do so”); *Atlantic City* Settlement Modification Order. The CTOA Amendments add “through the Administrative Committee” to CTOA section 7.5.1(ii), which does not change PJM’s authority to make emergency filings.

⁴⁵ See *Atlantic City* Settlement, § 4.2(C) (adding new section 5.3 to the Transmission Owners Agreement).

V. PROPOSED ARTICLE 9

Question 8: *You state that, in the Atlantic City Settlement Order,[footnote omitted] the Commission determined that the allocation of rights and responsibilities between PJM and the PJM TOs is entitled to Mobile-Sierra protection.[footnote omitted] You further state that “the Commission’s recognition of Mobile-Sierra protection carried forward to the relevant provisions of the CTOA that the Commission approved in 2006, and which are reflected in section 9.16.3 of the CTOA Amendments.”[footnote omitted] You also state that “[t]he logic of the Atlantic City Settlement Order controls the question of Mobile-Sierra protection for these amendments to the CTOA just as it did for the CTOA to begin with.”[footnote omitted]*

Question 8(a):

Please identify and explain the specific findings in the Atlantic City Settlement Order and/or 2006 CTOA Order that you contend control the Mobile-Sierra question in the instant case.

Response to Question 8(a):

As noted in the response to Question 7(a), the *Atlantic City Settlement* allocates the rights and responsibilities between PJM and the Transmission Owners.⁴⁶ The Transmission Owners retained section 205 filing rights with respect to transmission rate design, cost recovery, and other Transmission Owner-retained rights, and transferred to PJM section 205 filing rights with respect to Tariff Terms and Conditions. The *Atlantic City Settlement* provided for changes both to the Transmission Owners Agreement⁴⁷ and to the PJM Tariff to reflect the parties’ allocation of filing rights going forward.⁴⁸

To underscore the settling parties’ intent that each should act independently within their retained or delegated roles,⁴⁹ the settlement included a *Mobile-Sierra* clause to provide certainty for both PJM and Transmission Owners. Specifically, Section 4.5 of the *Atlantic City Settlement* provided that:

It is the intent of the Parties that the provisions of this Settlement Agreement, *and the conforming changes to the PJM Tariff and the Transmission Owners Agreement required by this Settlement Agreement*, shall be subject to change solely by written amendment executed by PJM and the Transmission Owners, with the Transmission

⁴⁶ *Atlantic City Settlement*, § 4.3.

⁴⁷ *Atlantic City Settlement*, § 4.2. The *Atlantic City Settlement Agreement* also provided that the signatories to the West Transmission Owners Agreement committed to make conforming parallel changes as listed to the Transmission Owners Agreement. *Atlantic City Settlement Agreement*, § 3.4.

⁴⁸ *Atlantic City Settlement*, § 4.3.

⁴⁹ See *Atlantic City Settlement*, Explanatory Statement at 4 (“[P]ermit PJM to perform its required functions independently in a manner that PJM has determined is acceptable. . . . PJM has determined that the Settlement Agreement preserves PJM’s ability to provide non-discriminatory transmission service and administer the PJM markets in an independent manner.”).

Owners acting by vote in accordance with Section 6.5.1 of the Transmission Owners Agreement. It is the intent of this Section 4.6 that the Commission's right to change any provision of this Settlement Agreement shall be limited to the maximum extent permissible by law and that any such change shall be in accordance with the *Mobile-Sierra* public interest standard applicable to fixed rate agreements.⁵⁰

The *Atlantic City* Settlement also provided that the following provision be added to the PJM Tariff:

9.4 Mobile Sierra:

Sections 9.1 through 9.4 of this Tariff shall be subject to change solely by written amendment executed by PJM and the Transmission Owners, with the Transmission Owners acting by vote in accordance with Section [8.5.1] of the [CTOA]. It is the intent of this Section 9.4 that the FERC's right to change Sections 9.1 through 9.4 shall be limited to the maximum extent permissible by law and that any such change shall be in accordance with the *Mobile-Sierra* public interest standard applicable to fixed rate agreements.⁵¹

These provisions of the *Atlantic City* Settlement make clear the parties' intent that *Mobile-Sierra* protections should apply to the settlement agreement itself and conforming changes to the PJM Tariff and the Transmission Owners Agreement required by the agreement.⁵²

In the *Atlantic City* Settlement Order, the Commission recognized the importance of these *Mobile-Sierra* protections regarding the allocation of rights and responsibilities between PJM and the Transmission Owners.⁵³ The Commission found that the *Atlantic City* Settlement "provides for a reasonable allocation of Section 205 filing rights as between PJM and the [Transmission Owners], consistent with our recognition in our prior orders in this proceeding . . . that both RTOs/ISOs and [Transmission Owners] are public utilities under the FPA and thus both have Section 205 filing rights."⁵⁴ The Commission went on to explain that the *Atlantic City* Settlement "constitutes a voluntary, compromise agreement of the sort found permissible by the court"⁵⁵ and confirmed that it "accept[s] the proposed *Mobile-Sierra* 'public interest' clause governing revisions to the parties' voluntary agreement (as to the division between, essentially, rate-related filings and terms and conditions-related filings – with the [Transmission Owners] filing the former and PJM the latter)"⁵⁶

⁵⁰ *Atlantic City* Settlement, § 4.5 (emphasis added).

⁵¹ *Atlantic City* Settlement, § 4.3(B) See PJM Tariff, § 9.4.

⁵² CTOA Amendments Filing, Transmittal Letter at 16, 43-44.

⁵³ *Atlantic City* Settlement Order at P 33.

⁵⁴ *Id.* P 30.

⁵⁵ *Id.* P 32.

⁵⁶ *Id.* P 33.

In 2006, at the Commission’s urging, the Transmission Owners and PJM consolidated the three outstanding Transmission Owners Agreements into the CTOA with PJM as a party “for the purpose of establishing the [respective] rights and commitments of the [Transmission Owners] and PJM identified [t]herein.”⁵⁷ The Commission agreed with the Transmission Owners “that the Consolidated TO Agreement largely tracks the Canceled TO Agreements and will be beneficial to all market participants to the extent it provides a single articulation of the parties’ respective rights and obligations.”⁵⁸ Thus, the allocation of rights and responsibilities between PJM and the Transmission Owners—and *Mobile-Sierra* protections for those rights—carried forward from the *Atlantic City* Settlement, and corresponding changes to the Transmission Owners Agreement and the PJM Tariff, to the CTOA, which has largely remained unchanged to this day.

Section 9.16.3 of the CTOA Amendments recognizes this unbroken link between the Commission’s approval of the *Atlantic City* Settlement and the CTOA. Section 9.16.3 also recognizes that the CTOA Amendments that address the allocation of filing rights and other rights and commitments should similarly be subject to the same *Mobile-Sierra* protection consistent with the Commission’s decision to accept the *Atlantic City* Settlement. Just as in 2003, the parties’ allocation of rights and responsibilities pursuant to the CTOA Amendments embodies the type of agreement deserving of *Mobile-Sierra* protection, as the Commission has found in approving the *Atlantic City* Settlement Order and the consolidation of the three outstanding Transmission Owners Agreements into the CTOA.⁵⁹

VI. PROPOSED ATTACHMENT B - DISPUTE RESOLUTION PROCEDURES

Question 9: *Proposed Attachment B, section (B) of the Amended CTOA is titled “Disputes Involving Proposed Section 205 Filings Under Section 7.9.”[footnote omitted] Existing section 7.6 of the CTOA is titled “Disputes Regarding Exclusive Filing Rights” and makes specific references to FPA section 205 filings.[footnote omitted] Proposed Attachment B, section (B) of the Amended CTOA and existing section 7.6 of the CTOA have similar and overlapping provisions.*

Question 9(a):

Please explain the basis for proposed Attachment B, section (B) and highlight any differences between it and existing section 7.6 of the CTOA.

⁵⁷ CTOA, Preamble; *PJM Interconnection, L.L.C.*, 114 FERC ¶ 61,283, at P 3 (2006) (noting that the Commission previously encouraged the development of a consolidated Transmission Owners Agreement).

⁵⁸ *PJM Interconnection, L.L.C.*, 114 FERC ¶ 61,283, at P 10.

⁵⁹ As noted in the CTOA Amendments Filing, if the CTOA Amendments and PJM’s filing adding the Planning Protocol to the PJM Tariff are accepted by the Commission, the Planning Protocol will become a Tariff Term and Condition subject to the allocation of filing rights protected by the *Atlantic City* Settlement. However, the Planning Protocol itself is not subject to *Mobile-Sierra* protection. What is protected is PJM’s filing rights to file changes to the Planning Protocol, not the language of the Planning Protocol itself or the RTEP adopted pursuant to the Planning Protocol. CTOA Amendments Filing, Transmittal Letter at 43 n.180.

Response to Question 9(a):

No differences are intended. Existing section 7.6 of the CTOA is the procedure that applies to a dispute as to whether PJM or the Transmission Owners are the proper party to make a section 205 filing. The Commission has accepted that procedure as just and reasonable.⁶⁰ The procedure has not been invoked since the CTOA was agreed to by the parties and approved by the Commission.

Attachment B, section B proposes to use the same process to resolve disputes under section 7.9, but applies to disputes regarding whether a filing contravenes the Protected Provisions or seeks to modify the terms of those articles – that is, whether the filing invades the rights that the Transmission Owners have not voluntarily ceded to PJM but instead reserved to themselves, or whether it invades the rights of PJM that the Transmission Owners have voluntarily conceded to PJM. In other words, the substance of the dispute covered by Section 7.9 is different than the “filing rights” dispute that would be covered by section 7.6, even though the dispute resolution processes would be the same. Because the cession itself is a voluntary agreement, the parties have also voluntarily agreed to a procedure designed to resolve any disputes that may arise as to what has or has not been ceded. As noted above in response to the similar Question 6(a), the procedure is designed to conclude before any filing is made with the Commission, similar to dispute resolution provisions in many standard contracts designed to resolve potential disputes before they go to litigation. It is consistent with the Commission’s policy encouraging settlements and other jurisdictional contracts’ dispute resolution provisions,⁶¹ and is intended to work in the same manner as the procedure the Commission has approved for disputes under section 7.6.

Although the Attachment B, section B process is not intended to materially differ from the existing section 7.6 process, it does contain some differences in language that reflect the different context. To the extent that any specific detail of the process is not set out in Attachment B, section B, the process set out in section 7.6 will govern. In addition, it is the parties’ intent to use the same Neutral Party who has been in place since the *Atlantic City* Settlement in order to expedite the process of resolving disputes under section 7.9.

Question 10: *Proposed Attachment B, sections (B)(ii) & (B)(iii) of the Amended CTOA provide the PJM TOs and PJM the right to impose a 10-day delay beyond the existing notice and consultation period before the PJM TOs or PJM may submit certain FPA section 205 filings to the Commission.[footnote omitted]*

Question 10(a):

If there continues to be a dispute after the additional 10-day period, may either the PJM TOs or PJM make the FPA section 205 filing that is subject to the dispute?

⁶⁰ *Atlantic City* Settlement Order at PP 28, 34; *Atlantic City* Modification Settlement Order at P 5.

⁶¹ *See supra* nn.36-37.

Response to Question 10(a):

Yes. Under Attachment B, section B if the dispute is not resolved by the Neutral Party within the 10-day period, then no decision has been issued. The filing party may proceed with the filing under FPA section 205.

Question 10(b):

If the PJM TOs or PJM may submit a filing to the Commission pursuant to FPA section 205 if the dispute is not resolved before the expiration of the 10-day filing delay period, what would be the role of any subsequent resolution by a Neutral Party pursuant to proposed Attachment B, section (B)(v) of the Amended CTOA?

Response to Question 10(b):

If the Neutral Party does not rule within the 10-day filing delay period, then the party seeking to make the section 205 filing would be fully free to do so. Any subsequent decision by the Neutral Party would be only advisory.

Question 11: *Proposed Attachment B, section (B)(v) of the Amended CTOA binds the PJM TOs and PJM to resolution by a Neutral Party for disputes about whether potential FPA section 205 filings to the Commission, not limited to section 205 filings that revise the CTOA, contravene the CTOA.*

Question 11(a):

Please provide additional support to demonstrate that it is just and reasonable for the outcome of the CTOA's dispute resolution procedures to restrict the right of a party to make an FPA section 205 filing to revise a different tariff or agreement for which that party has an existing right to make FPA section 205 filings.

Response to Question 11(a):

As explained in the response to Question 6(a), the fundamental purpose of the CTOA is to voluntarily transfer to PJM certain rights of the Transmission Owners and establish the respective responsibilities of the Transmission Owners and PJM. It follows that when there is a dispute involving whether a proposed filing is inconsistent with the rights transferred under the CTOA, it is a dispute under the CTOA. Attachment B is the voluntary process the parties have agreed upon for resolving such disputes that arise under section 7.9 of the CTOA. Section 7.9 only applies to disputes involving Transmission Owner rights retained or transferred to PJM or Transmission Owner obligations to PJM under the CTOA, and not to other PJM section 205 filings that do not implicate or affect Transmission Owner FPA rights or CTOA-established obligations. The result of the dispute resolution procedure will restrict the rights of a party to make a section 205 filing only if it has been found in a binding procedure voluntarily established by the parties to contravene Articles 2, 4, 5, 6,7 or Attachment B, or modify the terms of those articles.

To the extent the premise of this question is that there might otherwise be some mechanism that would allow a party to circumvent the decision by seeking to achieve the same result through

a filing under some agreement other than CTOA, that result would not be just and reasonable, as it would allow a party to do indirectly what it cannot do directly and would be inconsistent with the parties' commitments under the CTOA.

As stated in the response to Question 6(a), nothing in section B of Attachment B precludes the filing of a complaint by any interested party. Paragraph (vi) of section B expressly preserves the Parties' and PJM's right to make filings under section 206. Paragraph B(v) further provides that interested persons, including the Parties and PJM, may file a complaint seeking review of the Neutral Party's decision. If a complaint is filed, nothing restricts the Commission's authority to decide whether the proposed filing contravenes the Agreement. These provisions mirror identical provisions in section 7.6 that were added to the original *Atlantic City Settlement* at the request of the Commission and ultimately approved.⁶²

Question 12: *Proposed Attachment B, section (B)(iv) of the Amended CTOA states:*

If PJM disputes a Section 205 filing that the Transmission Owners propose to make, in order to resolve a dispute in a manner that requires the Transmission Owners to withdraw or alter the proposed Section 205 filing, the agreement of the Transmission Owners must be obtained by vote in accordance with Section 8.5.1 of this Agreement. [footnote omitted]

Question 12(a):

Please explain the impact of any failure to obtain the agreement of the PJM TOs pursuant to this provision on the obligation outlined in proposed Attachment B, section (B)(v) of the Amended CTOA for the resolution of a dispute by a Neutral Party to be binding on the parties to the dispute.

Response to Question 12(a):

Section (B)(iv) applies to filings the Transmission Owners "propose to make," and to resolutions of disputes with PJM before the Neutral Party is brought in to resolve the dispute with a binding decision. At this point, neither party could be bound by a Neutral Party's decision, as the Neutral Party has not yet been engaged. Since the Transmission Owners would have voted under section 8.5.1 of the CTOA to make the proposed filing, they would likewise have to vote to agree with PJM, prior to the Neutral Party being engaged, to amend or withdraw the proposed filing.

⁶² See *Atlantic City Settlement Order* at PP 28, 34 (directing the Settling Parties to modify the *Atlantic City Settlement* to provide Commission review of a Neutral Party's determinations regarding filing rights disputes); *PJM Interconnection, L.L.C.*, Modification of Settlement Agreement, Docket No. OA97-261-009, *et al.*, § 3.3 (filed Jan. 20, 2004 and corrected Jan. 23, 2004) (adding language to section 5.3(v) of the Transmission Owners Agreement to comply with the Commission's directive providing that "[i]nterested parties [] may file a complaint seeking review by the FERC of the Neutral Party's decision, and the FERC's authority to interpret which Parties have Section 205 rights shall not be limited by the Neutral Party's decision as it relates to these disputes"); *Atlantic City Settlement Modification Order* at P 5 (agreeing that the modified settlement complied fully with the Commission's prior directive that interested parties must have appeal rights with respect to disputes over Section 205 filing rights resolved by a Neutral Party).

If the Transmission Owners cannot agree to reach a resolution with PJM, due for example to the failure to obtain the agreement of the Transmission Owners under CTOA section 8.5.1 to withdraw or amend the proposed filing, the matter would be presented to the Neutral Party for decision. The Neutral Party's decision is binding on the Parties and PJM without the need for a vote or further action.

Question 12(b):

This provision references the withdrawal of a proposed FPA section 205 filing. Please explain whether the resolution of a dispute by a Neutral Party pursuant to proposed Attachment B, section (B)(v) of the Amended CTOA can impose an obligation on a party to withdraw an FPA section 205 filing that it has already made with the Commission.

Response to Question 12(b):

Nothing in Attachment B, section B requires the withdrawal of a filing that is already made. Section B(iv) refers to "proposed filings." As noted above, once the time period for the Neutral Party to rule has expired and the filing has been made, a decision by the Neutral Party has no binding effect.

VII. CONCLUSION

The CTOA Amendments are part of an integrated whole, negotiated and agreed to by PJM and the Transmission Owners as necessary to provide PJM with section 205 filing rights over the Planning Process and to ensure PJM can properly and efficiently execute this authority, while protecting the Transmission Owners' retained rights. The Transmission Owners request that the Commission accept the CTOA Amendments for filing without hearing, modification, or condition and authorize the CTOA Amendments to become effective as of September 20, 2024, the date originally requested in the CTOA Amendments Filing.

Respectfully submitted,

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on behalf of the PJM Transmission Owners*

October 9, 2024

⁶³ Admitted to the DC Bar under DC App. R. 46-A (Emergency Examination Waiver) and practice is supervised by one or more DC Bar members.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington, D.C. this 9th day of October, 2024.

/s/ Kimberly B. Frank

Kimberly B. Frank