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October 9, 2024

Honorable Debbie-Anne A. Reese  
Acting Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426-0001

*Re: PJM Interconnection, L.L.C., Docket No. ER24-2338-001  
Facilitating PJM Independent 205 Filing Rights Over Transmission Planning*

Dear Acting Secretary Reese,

Pursuant to the September 9, 2024 Deficiency Notice<sup>1</sup> issued in the above-captioned proceeding, PJM Interconnection, L.L.C. (“PJM”) hereby submits the following responses.

PJM respectfully requests that the Commission accept the revisions to the PJM Open Access Transmission Tariff (“Tariff”)<sup>2</sup> and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”)<sup>3</sup> proposed in PJM’s June 21, 2024 Filings<sup>4</sup> to be effective as of September 20, 2024, the date originally requested in those filings.

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<sup>1</sup> *PJM Interconnection, L.L.C.*, Deficiency Notice of the Division of Electric Power Regulation – East, Docket No. ER24-2338-000 (Sept. 9, 2024) (hereafter, the “September 9, 2024 Deficiency Notice”).

<sup>2</sup> The Tariff is currently located under PJM’s “Intra-PJM Tariffs” eTariff title, available here: <https://etariff.ferc.gov/TariffBrowser.aspx?tid=1731>. Terms not otherwise defined herein shall have the same meaning as set forth in the Tariff, the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), and the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (“RAA”).

<sup>3</sup> The Operating Agreement is currently located under PJM’s “Intra-PJM Tariffs” eTariff title, available here: <https://etariff.ferc.gov/TariffBrowser.aspx?tid=1731>. Terms not otherwise defined herein shall have the same meaning as set forth in the PJM Open Access Transmission Tariff (“Tariff”), Operating Agreement, and the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (“RAA”).

<sup>4</sup> *PJM Interconnection, L.L.C.*, FPA Section 206 Filing of PJM Interconnection, L.L.C., Docket No. EL24-119-000 (June 21, 2024) (hereafter, the “June 21, 2024 FPA Section 206 Filing”); *PJM Interconnection, L.L.C.*, FPA Section 205 Filing of PJM Interconnection, L.L.C., Docket No. ER24-2338-000 (June 21, 2024) (hereafter, the “June 21, 2024 FPA Section 205 Filing”) (collectively, the “June 21, 2024 Filings”).

Debbie-Anne A. Reese, Acting Secretary  
October 9, 2024  
Page 2

Respectfully submitted,

/s/ Thomas DeVita

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1. *You state that PJM is not proposing any substantive changes to the RTEP Protocol or any other Tariff or Operating Agreement provisions. However, several references in the Tariff to “Operating Agreement, Schedule 5,” are replaced with references to “the dispute resolution procedures set forth in the Tariff or the Consolidated Transmission Owners Agreement, as applicable.”*
  - a. *Please support these proposed revisions.*
  - b. *Please explain how the dispute resolution procedures in the Tariff and the Consolidated Transmission Owners Agreement (CTOA) differ from those in the Operating Agreement and how the Tariff and CTOA provisions will interact, including an explanation of what would occur if there were an inconsistency between the Tariff and the CTOA.*

### **PJM Response:**

As PJM explained in its June 21, 2024 Filings, PJM is proposing to move the RTEP Protocol from Operating Agreement, Schedules 6, 6-A and 6-B to a new Tariff, Schedules 19, 19-A and 19-B, as well as several additional changes to recognize the new location of the RTEP Protocol in the Tariff. One of those additional changes was to replace references in the Tariff and Operating Agreement, which state that disputes regarding RTEP processes are subject to the dispute resolution procedures of the Operating Agreement, with a statement that disputes regarding RTEP processes being subject to the dispute resolution procedures of the Tariff or CTOA, as appropriate. Since the RTEP Protocol would be located in the Tariff, PJM believes it is appropriate that any disputes related to the RTEP process would be subject to the Tariff dispute resolution process (as opposed to the Operating Agreement’s dispute resolution process) as well. This is particularly true since other provisions that affect the RTEP, such as PJM’s interconnection process and provisions related to network upgrades, already reside in the Tariff and are subject to the dispute resolution procedures set forth in the Tariff.<sup>5</sup> In other cases, as discussed below, it is appropriate for disputes related to the RTEP process to be subject to the CTOA’s dispute resolution process.

The currently-effective Tariff, the currently-effective CTOA and the proposed revised CTOA<sup>6</sup> each contain dispute resolution procedures applicable to certain RTEP-related issues. For instance, currently-effective Tariff section 9.3 and CTOA section 7.6 contain procedures to resolve disputes over whether PJM or the Transmission Owners have the right to make a filing to revise the Tariff<sup>7</sup> – PJM and the Transmission Owners must engage in an expedited process to attempt to

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<sup>5</sup> See Tariff, Part I, sections 12 and 40.

<sup>6</sup> *Duquesne Light Co.*, Amendments to the Consolidated Transmission Owners Agreement, Docket No. ER24-2336-000 (June 21, 2024) (hereafter, the “TOs’ FPA Section 205 Filing”) (proposing revisions to the CTOA, referred to herein as the “CTOA Amendments”).

<sup>7</sup> See *Pennsylvania-New Jersey-Maryland Interconnection*, Settlement Agreement, Docket No. OA97-261-006, *et al.* (Oct. 3, 2003), as modified, Modification of Settlement Agreement, Docket No. OA97-261-009, *et al.*, § 7.6 (filed

resolve any dispute regarding whether a filing contravenes the rights and responsibilities set forth in the CTOA. Additionally, proposed CTOA section 7.9 (which follows a process materially identical to the one set forth in Tariff section 9.3 and CTOA section 7.6) and proposed CTOA Attachment B, section B set out the process pursuant to which PJM and the Transmission Owners would engage in dispute resolution if there were ever a dispute about whether a proposed revision to the RTEP Protocol contravened the rights and responsibilities set forth in specifically enumerated articles of the CTOA. Specifically, proposed CTOA section 7.9 is modeled after these provisions of the PJM Tariff and CTOA – which have already been accepted by the Commission – and Attachment B, section B will allow any such disputes to be quickly resolved while also preserving the Commission’s ability to decide the dispute if necessary. Additionally, under proposed CTOA Attachment B, section A, if PJM and the Parties to the CTOA have any dispute regarding any other matter governed specifically by the CTOA, PJM and the Parties will engage in a sequential, three-step process to address, and attempt to resolve, disputes. The first step begins with officer-level representative meetings, the second step escalates discussions to senior officers and the PJM President, and the third step provides for a meeting with the PJM Board.

On the other hand, if any other dispute between the parties were to arise related to the RTEP process (*i.e.*, a dispute which does not involve whether a right was transferred or retained under the CTOA, or a dispute that does not relate to the administration of the CTOA) or a dispute were to arise with an entity that is not a CTOA party, the applicable dispute resolution provisions set forth in the Tariff would apply. Similar to the dispute resolution procedures set forth in the Operating Agreement, the Tariff’s dispute resolution procedures provide a sequential process pursuant to which both procedural and substantive planning issues can be addressed, and serve as a means for parties to resolve disputes related to the planning processes before turning to the Commission.<sup>8</sup>

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Jan. 20, 2004 and corrected Jan. 23, 2004) (*Atlantic City Settlement*); *Pennsylvania-New Jersey-Maryland Interconnection*, 105 FERC ¶ 61,294, at P 34 (2003) (approving the *Atlantic City Settlement*) (“Atlantic City Settlement Order”).

<sup>8</sup> See Order No. 890 at PP 501-503.

2. *You state that “the rights to plan the Transmission Owners’ facilities, and any accompanying filing rights, ultimately reside with the PJM Transmission Owners and require PJM to obtain the Transmission Owners’ agreement to transfer.”*
  - a. *Please identify the specific documents and sections that specify (1) the entity or entities that have rights to plan the Transmission Owners’ facilities; (2) the rights to submit filings to the Commission regarding regional planning; and (3) the requirement that PJM obtain Transmission Owners’ agreement before making a section 206 filing to transfer provisions from the Operating Agreement to the Tariff.*

**PJM Response:**

**1. *the entity or entities that have rights to plan the Transmission Owners’ facilities***

The legal rights to plan the transmission facilities of the PJM Transmission Owners originate in the first instance with the PJM Transmission Owners’ themselves, as public utilities under Federal Power Act (“FPA”) section 201.<sup>9</sup>

The CTOA is the bilateral contract by which the PJM Transmission Owners voluntarily transferred the rights to plan their transmission facilities to the legal entity known as PJM Interconnection, L.L.C. (“PJM”), which is also a public utility under the FPA. This fact is made clear on the very first page of the CTOA, which states that “this Agreement is made by and between the Parties and PJM Interconnection, L.L.C. (hereinafter referred to as “PJM”) solely for the purpose of establishing the rights and commitments of PJM identified herein.”)

The most relevant sections that effectuate the transfer to PJM of the legal rights to plan the facilities of the PJM Transmission Owners are CTOA sections 4.1.4 and 6.3.3.

**Each party shall transfer to PJM, pursuant to this Agreement and in accordance with the Operating Agreement, the responsibility to prepare a Regional Transmission Expansion Plan and to provide information reasonably requested by PJM to prepare the Regional Transmission Expansion Plan and shall otherwise cooperate with PJM in such preparation.**

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<sup>9</sup> 16 U.S.C. § 824(e) (“The term “public utility” when used in this subchapter and subchapter III of this chapter means any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter (other than facilities subject to such jurisdiction solely by reason of section 824e(e), 824e(f), [1] 824i, 824j, 824j–1, 824k, 824o, 824o–1, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title).”).

**PJM shall . . . Administer the Regional Transmission Expansion Planning Protocol and provide related timely reports to the Administrative Committee consistent with the Operating Agreement and the PJM Tariff.**

Importantly, these sections of the CTOA not only transfer the rights to plan the facilities of the PJM Transmission Owners to PJM, but also specify the *scope and configuration* of that transfer to PJM. Specifically, under these CTOA sections, the PJM Transmission Owners voluntarily transferred to PJM “the responsibility to prepare a Regional Transmission Expansion Plan” and the responsibility to “[a]dminister the Regional Transmission Expansion Planning Protocol.”

***2. the rights to submit filings to the Commission regarding regional planning***

As described above, the legal rights to plan the transmission facilities of the PJM Transmission Owners originate in the first instance with the PJM Transmission Owners themselves, as public utilities under FPA section 201.<sup>10</sup> Similarly, the corresponding rights to submit FPA section 205 filings regarding the planning of these facilities also originate in the first instance with the PJM Transmission Owners. The Commission has previously explained that, “[a]s public utilities that own transmission facilities used for jurisdictional service, the PJM transmission owners have the right under section 205 of the FPA, which applies to any “public utility,” to make filings with respect to their public utility functions.”<sup>11</sup> The planning of public utility interstate transmission facilities is undoubtedly a “public utility function,” given the Commission’s plenary jurisdiction over such facilities under FPA section 201. Accordingly, the corresponding FPA section 205 filing rights associated with the planning of those facilities reside in the first instance with the PJM Transmission Owners.

As referenced above, the CTOA not only transfers the rights to plan the facilities of the PJM Transmission Owners to PJM, but also specifies the scope and configuration of that transfer to PJM. This is also true for the corresponding FPA section 205 filing rights associated with the right to plan these facilities. Specifically, under these CTOA sections, the PJM Transmission Owners voluntarily transferred to PJM “the responsibility to prepare a Regional Transmission Expansion Plan” and the responsibility to “[a]dminister the Regional Transmission Expansion Planning Protocol.” To this end, the RTEP Protocol itself is a creation of the CTOA, designed to organize the granted rights to plan the facilities of the PJM Transmission Owners under a common methodology and protocol, and describe the manner in which PJM is permitted to make FPA section 205 filings regarding the planning of those facilities. The CTOA defines the location of the

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<sup>10</sup> 16 U.S.C. § 824(e) (“The term “public utility” when used in this subchapter and subchapter III of this chapter means any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter (other than facilities subject to such jurisdiction solely by reason of section 824e(e), 824e(f), [1] 824i, 824j, 824j–1, 824k, 824o, 824o–1, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title).”).

<sup>11</sup> *Pennsylvania-New Jersey-Maryland Interconnection*, 101 FERC 61,318, at 24 (2002).

RTEP Protocol, explaining that “Regional Transmission Expansion Planning Protocol shall mean Schedule 6 of the Operating Agreement, or any successor thereto.” Operating Agreement, Schedule 6, section 1.6 describes at length the process by which the PJM Board approves the RTEP, and the Office of the Interconnection files the RTEP with the Commission.

Beyond the assembly and submission of the RTEP as described in the RTEP Protocol, PJM has the ability to propose amendments to the RTEP Protocol itself, but by virtue of the RTEP Protocol’s location in the Operating Agreement, PJM must first obtain the agreement of the Members Committee prior to doing so under FPA section 205. If such agreement is not obtained, PJM must submit its amendment under FPA section 206, with requisite authorization from its Board. Importantly, the ability of the Members Committee to condition the exercise of PJM’s granted FPA section 205 filing rights is not specified in the RTEP Protocol at all. Rather, it is a byproduct of an entirely separate section of the Operating Agreement (section 18.6), which conditions Member Committee approval of revisions to *any* portion of the Operating Agreement or schedule thereto, as a general matter.

***3. the requirement that PJM obtain Transmission Owners’ agreement before making a section 206 filing to transfer provisions from the Operating Agreement to the Tariff.***

PJM does not require the PJM Transmission Owners’ agreement to make an FPA section 206 filing against any part of the Operating Agreement, including the RTEP Protocol. The PJM Board already has the ability to direct PJM to make such a filing, under Operating Agreement, Section 7.7(vi).

**In accordance with this Agreement, the PJM Board shall supervise and oversee all matters pertaining to the PJM Region and the LLC, and carry out such other duties as are herein specified, including but not limited to the following duties and responsibilities:**

**vi) Petition FERC to modify any provision of this Agreement or any Schedule or practice hereunder that the PJM Board believes to be unjust, unreasonable, or unduly discriminatory under section 206 of the Federal Power Act, subject to the right of any Member or the Members to intervene in any resulting proceedings;**

PJM’s June 21, 2024 Filings in these proceedings are the result of the PJM Boards’ independent determination that the location of the RTEP Protocol in the Operating Agreement is no longer just and reasonable, and PJM is seeking an independent determination of the same from the Commission in these proceedings.

However, once the Commission determines that the location of the RTEP Protocol in the Operating Agreement is no longer just and reasonable under FPA section 206, it must establish the

just and reasonable replacement rate.<sup>12</sup> It is in this phase—the establishment of the just and reasonable replacement rate—that PJM believes that the consent of the PJM Transmission Owners is both required and prudent to ultimately effectuate the transfer of the RTEP Protocol to the Tariff. PJM believes that this is the case for two reasons.

First, as described above, the rights to submit FPA section 205 filings regarding the planning of the PJM Transmission Owners’ facilities originate in the first instance with the PJM Transmission Owners, as public utilities under the FPA. The CTOA is the bilateral contract through which the PJM Transmission Owners not only transfer their rights as public utilities to submit FPA section 205 filings regarding the planning of their facilities to PJM, but also specify the *scope and configuration* of that transfer. Specifically, the CTOA grants to PJM “the responsibility to prepare a Regional Transmission Expansion Plan” and the responsibility to “[a]dminister the Regional Transmission Expansion Planning Protocol.”

There is nothing in the CTOA that makes this voluntary transfer to PJM irrevocable, or otherwise prevents the PJM Transmission Owners and PJM from mutually agreeing, and proposing modifications to, the scope and configuration of this voluntary transfer of FPA section 205 filing rights to PJM. Additionally, any rights not specifically and clearly granted to PJM in the CTOA are retained by the PJM Transmission Owners, via CTOA section 5.4.

#### **5.4 Federal Power Act Rights.**

**Except as otherwise provided in this Agreement, each Party retains its rights pursuant to the Federal Power Act and the FERC’s rules and regulations thereunder.<sup>13</sup>**

In the CTOA Amendments, the PJM Transmission Owners are proposing to modify the location of the RTEP Protocol via revisions to the CTOA, as they are entirely within their rights to do.<sup>14</sup> In doing so, the PJM Transmission Owners are proposing to reconfigure the manner in

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<sup>12</sup> 16 U.S.C. § 824e.

<sup>13</sup> In addition, as the Court of Appeals confirmed in *Am. Mun. Power, Inc. v. FERC*, 86 F.4th 922, 932-34 (2023), the 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).

<sup>14</sup> PJM notes that while the RTEP Protocol itself was transferred to the Operating Agreement and currently requires a supermajority of the Members Committee to modify its substantive provisions via the normal FPA section 205 filing process, the document that designates the *location* of the RTEP Protocol is the CTOA, and not the Operating Agreement. This is by virtue of the definition of “Regional Transmission Expansion Planning Protocol,” which under the CTOA “shall mean Schedule 6 of the Operating Agreement, or any successor thereto.” Because the specification of the location of the RTEP Protocol is exclusively designated in the CTOA, and was not transferred to the Operating Agreement at all, the legal right to modify that location of the RTEP Protocol is explicitly reserved to the PJM Transmission Owners under the CTOA.



which the FPA section 205 filing rights associated with the rights to plan their facilities were originally (and voluntarily) granted to PJM, as is also within their right to do.

Because the CTOA Amendments directly impact the manner in which the PJM Transmission Owners voluntarily transfer the rights to submit FPA section 205 filings regarding their facilities to PJM, PJM is concerned that an order in these proceedings under FPA section 206 that directs this transfer, without the agreement of the PJM Transmission Owners as reflected in the CTOA, risks conflict with *Atlantic City*, which precludes the involuntary transfer of public utility FPA section 205 filing rights, including under FPA section 206.<sup>15</sup> Because *Atlantic City* permits the PJM Transmission Owners to voluntarily transfer their FPA section 205 filing rights via contract—in this case, the CTOA—CTOA amendments that reflect such a voluntary transfer are important to ensuring that the transfer can withstand judicial scrutiny.

Second, there is a practical reason why obtaining the consent of the PJM Transmission Owners via CTOA revisions is important. PJM's ability to operate its unified system, administer its markets, and conduct network planning, requires the proactive and voluntary cooperation and engagement of PJM's Transmission Owners. A protracted dispute between the PJM Transmission Owners and the Commission over the legality and validity of any reconfiguration of the transfer of the PJM Transmission Owners' public utility FPA section 205 filing rights to PJM in these proceedings raises the potential that any independent planning proposals that PJM might submit in the future will be challenged as *ultra vires* under the CTOA. This will exacerbate legal ambiguity around the viability of any requisite planning reforms, at a time when PJM is seeking to *reduce* such ambiguity, and proceed with proactively planning its system.

Accordingly, if the Commission determines that the location of the RTEP Protocol in the Operating Agreement is no longer just and reasonable, PJM respectfully requests that the Commission accept the CTOA Amendments as the just and reasonable replacement rate. In the event that the Commission determines that certain elements of the CTOA Amendments are not just and reasonable as a replacement rate, PJM respectfully requests that the Commission provide guidance so that PJM and the PJM Transmission Owners can consider the Commission's concern and take appropriate action in response.

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<sup>15</sup> *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002), *order enforcing mandate*, 329 F.3d 856 (2003) ("Similarly, nothing in section 206 sanctions denying petitioners their right to unilaterally file rate and term changes. Section 206 merely permits the Commission—acting either on its own initiative or after a complaint—to initiate changes to existing utility rates and practices. In order to make any change in an existing rate or practice, FERC must first prove that the existing rates or practices are 'unjust, unreasonable, unduly discriminatory or preferential.' 16 U.S.C. § 824e(a); see *Alabama Power Co. v. FERC*, 993 F.2d 1557, 1569 (D.C. Cir. 1993). Then FERC must show that its proposed changes are just and reasonable. *Tennessee Gas Pipeline Co. v. FERC*, 860 F.2d 446, 454 (D.C. Cir. 1988). Nothing in this provision gives FERC the power to deny a utility the right to file changes in the first instance.").

3. *The proposed revisions add Schedule 18, IROL Critical Resources, to the Tariff Table of Contents. This proposed revision is not explained in the Transmittal.*

a. *Please explain why this change was made, and how it relates to this filing.*

**PJM Response:**

In the transmittal letter for the PJM's June 21, 2024 FPA Section 205 Filing, PJM explained that while it did not propose any substantive changes to the RTEP Protocol or to any other Tariff or Operating Agreement provisions, it was proposing some clean-up, clarifying, or ministerial changes as more fully described in Attachment A to that filing.<sup>16</sup> In turn, in the first row of the chart set forth in Attachment A, PJM explained that it proposed to add "Schedule 18, IROL Critical Resource Cost Recovery, to [the] Table of Contents." PJM further explained that "PJM is not proposing any substantive changes to [Schedule 18], and is only proposing to add the title which was missing from the Table of Contents."

PJM clarifies again that the proposed addition of the title "Schedule 18, IROL Critical Resource Cost Recovery" to the Tariff, Table of Contents is a purely ministerial revision, since PJM had previously inadvertently excluded the title of Schedule 18 from the Table of Contents. PJM thought it would be beneficial to update the Table of Contents to include the missing title of Schedule 18, since one of the fundamental changes proposed in PJM's June 21, 2024 FPA Section 205 Filing is to add new Schedule 19 to the Tariff.

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<sup>16</sup> See June 21, 2024 FPA Section 205 Filing at 29.

4. *In light of the proposed revisions to the CTOA concerning the division of filing rights between PJM and the Transmission Owners, are corresponding revisions to section 9 of the Tariff necessary to ensure these provisions are consistent?*

**PJM Response:**

No, PJM does not believe that any changes to Tariff, section 9 are necessary in light of the Transmission Owners' proposed changes to the CTOA as set forth in the TOs' FPA Section 205 Filing.

In 2003, PJM and the Transmission Owners entered into the *Atlantic City* settlement pursuant to which each would exercise "exclusive and unilateral" filing rights over certain PJM Tariff responsibilities.<sup>17</sup> The Transmission Owners retained FPA section 205 filing rights with respect to transmission rate design, cost recovery, and other Transmission Owner retained rights, and transferred to PJM FPA section 205 filing rights with respect to Tariff Terms and Conditions. This division of filing rights was approved by the Commission and memorialized in Tariff, sections 9.1 and 9.2 and CTOA sections 7.3 and 7.5.

As explained by the PJM Transmission Owners, the CTOA Amendments are intended to clarify the division of responsibilities between PJM and the Transmission Owners, and the exercise of other responsibilities previously transferred to PJM by the Transmission Owners pursuant to the CTOA.<sup>18</sup> However, nothing in the CTOA Amendments is intended to change the division of filing rights as set forth in the *Atlantic City* settlement. Accordingly, PJM does not believe that any changes to Tariff, section 9 are necessary in light of the CTOA Amendments.

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<sup>17</sup> See *Pennsylvania-New Jersey-Maryland Interconnection*, 108 FERC ¶ 61,033 (2004). See also PJM Tariff §§ 9.1 - 9.2 (setting out the filing rights of each of Transmission Owners and PJM).

<sup>18</sup> See TOs' FPA Section 205 Filing at 19.

## **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 Audubon, Pennsylvania this 9th day of October, 2024.

/s/ Thomas DeVita

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