

191 FERC ¶ 61,182  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman;  
David Rosner, Lindsay S. See,  
and Judy W. Chang.

PJM Interconnection, L.L.C.

Docket Nos. ER22-2931-001

EL24-26-000

PJM Interconnection, L.L.C.

ER24-2690-000

PJM Interconnection, L.L.C.

(consolidated)

ORDER ACCEPTING EXECUTED INTERCONNECTION SERVICE AGREEMENTS  
AND ADDRESSING SHOW CAUSE PROCEEDING

(Issued June 2, 2025)

1. On December 20, 2023, in Docket No. ER22-2931-000, the Commission issued an order accepting an unexecuted Interconnection Service Agreement (ISA) and Interconnection Construction Service Agreement (ICSA) among PJM Interconnection, L.L.C. (PJM) as transmission provider, New Market Solar, LLC (New Market Solar) as interconnection customer, and Delmarva Power & Light Company (DPL) as transmission owner (Unexecuted Agreements), suspending them for five months, to be effective May 20, 2024, and establishing paper hearing procedures.<sup>1</sup> The Commission also initiated a show cause proceeding under section 206 of the Federal Power Act (FPA)<sup>2</sup> in Docket No. EL24-26-000 with respect to whether PJM's *pro forma* ICSA is just and reasonable and not unduly discriminatory or preferential, and consolidated both proceedings.

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 185 FERC ¶ 61,202 (2023) (December 2023 Order).

<sup>2</sup> 16 U.S.C. § 824e.

2. On April 2, 2024, in Docket No. ER22-2931-001, pursuant to FPA section 205,<sup>3</sup> part 35 of the Commission's regulations,<sup>4</sup> and part VI of the PJM Open Access Transmission Tariff (Tariff), PJM filed a revised and executed ISA and a revised and executed ICSA (collectively, Executed Agreements) among PJM, New Market Solar, and DPL.<sup>5</sup> On May 31, 2024, the Commission accepted the Executed Agreements for filing, suspended them for a nominal period to become effective May 20, 2024, subject to refund, and subject to the outcome of the paper hearing procedures previously established in the December 2023 Order.<sup>6</sup>

3. On August 2, 2024, in Docket No. ER24-2690-000, PJM filed Tariff revisions intended to address the concerns identified by the Commission in the show cause proceeding established in the December 2023 Order (Site Control Amendments Filing).<sup>7</sup> In the filing, PJM submitted proposed revisions to Tariff, Parts VII (Transition Cycle Generation Interconnection Procedure), VIII (New Rules Generation Interconnection Procedure), and IX (Forms of Interconnection-Related Agreements) related to the procurement of third-party land rights (Site Control Amendments).

4. As discussed below, we find that PJM's *pro forma* ICSA is unjust and unreasonable. We also find that PJM's proposed Site Control Amendments do not remedy the concerns set forth in the December 2023 Order. Accordingly, as discussed below, we direct PJM to make a compliance filing that revises section 5.3 of its *pro forma* ICSA and *pro forma* Generator Interconnection Agreement (GIA). We also accept the Executed Agreements as filed.

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<sup>3</sup> 16 U.S.C. § 824d.

<sup>4</sup> 18 C.F.R. pt. 35 (2024).

<sup>5</sup> PJM Interconnection, L.L.C., PJM Service Agreements Tariff, PJM SA No. 6612 (PJM SA No. 6612 among PJM, New Market Solar, and DPL) (0.1.0); PJM SA No. 6613 (PJM SA No. 6613 among PJM, New Market Solar, and DPL) (0.1.0). Capitalized terms that are not defined in this order have the meaning specified in the Tariff and Operating Agreement.

<sup>6</sup> *PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,126 (2024) (May 2024 Order).

<sup>7</sup> PJM submitted this filing as a compliance filing in response to Docket No. EL24-26-000. PJM made this filing in a different docket to conform with Commission rules regarding tariff filings made in response to a section 206 proceeding. *Elec. Tariff Filings*, 130 FERC ¶ 61,047, at P 14 (2010) ("In responding to a complaint or section 206 proceeding, "the compliance filing made through the electronic tariff filing portal will receive a new root docket, rather than a subdocket from the original complaint case.").

## **I. Background and Filings**

### **A. Unexecuted Agreements and December 2023 Order**

5. On September 26, 2022, as supplemented on September 30, 2022, PJM filed the Unexecuted Agreements.<sup>8</sup> As relevant here, SunEnergy1, LLC (SunEnergy)—the parent company of New Market Solar—requested that PJM file the agreements unexecuted because it contested certain terms in the Facilities Study Report that would have required New Market Solar to acquire approximately one acre of land and corresponding permits for DPL to construct Network Upgrades<sup>9</sup> on third-party land adjacent to DPL’s existing substation, to accommodate the interconnection and construction of a 50 MW solar facility in Dorchester County, Maryland.<sup>10</sup>

6. In its protest to the Unexecuted Agreements, SunEnergy argued that PJM’s *pro forma* ICSA section 5 is silent as to which entity is responsible for using efforts to acquire third-party land for the construction of Network Upgrades because the portion of PJM’s *pro forma* ICSA that discusses land rights obligations is limited to land rights over the “Site,” which is defined in the Tariff as property and easements “on which the Customer Facility is situated and/or on which the Customer Interconnection Facilities are to be located.”<sup>11</sup> SunEnergy argued that, because the Network Upgrades would be

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<sup>8</sup> PJM, Filing, Docket No. ER22-2931-000 (filed Sept. 26, 2022).

<sup>9</sup> Network Upgrades are defined as “modifications or additions to transmission-related facilities that are integrated with and support the Transmission Provider’s overall Transmission System for the general benefit of all users of such Transmission System.” PJM Tariff § 1.

<sup>10</sup> SunEnergy October 2022 Protest at 8 (citing to Facilities Study Report at 5-7 (stating that New Market Solar must obtain “approximately 1-acre of land directly adjacent and to the northeast of the existing property”, “[right-of-way] and permits for routing the transmission lines to the expanded substation”, and “any new [right-of-way] and permits for routing the new transmission line between East New Market Substation and their interface substation”).

<sup>11</sup> *Pro forma* ICSA, § 5.1 (Grant of Easements and Other Land Rights) (“Interconnection Customer at its sole cost and expense, shall grant such easements and other land rights to the Interconnected Transmission Owner over the Site at such times and in such a manner as the Interconnected Transmission Owner may reasonably require. . . .” (emphasis added)); *pro forma* ICSA, Appendix 1 at 17 (Definition of Site) (“‘Site’ shall mean all of the real property, including but not limited to any leased real property and easements, on which the Customer Facility is situated and/or on which the Customer Interconnection Facilities are to be located.”).

located on land outside of the “Site,” section 5 of the *pro forma* ICSA—and the corresponding section 5 of the New Market Solar ICSA—do not require New Market Solar to acquire and transfer such land to DPL. In its response to SunEnergy’s arguments, PJM stated that its Tariff is silent as to the party responsible for acquiring land necessary to construct Network Upgrades on third-party land.<sup>12</sup> PJM explained that, given the Tariff’s silence on this issue, PJM has “historically deferred” to the transmission owner’s position with respect to the party charged with obtaining land rights.<sup>13</sup>

7. In the December 2023 Order, the Commission found that that PJM did not adequately support the Facilities Study Report’s requirement that New Market Solar “will need to acquire approximately 1-acre of land” and associated permits and easements necessary to construct the Network Upgrades.<sup>14</sup> The Commission explained that Order No. 2003 requires that, at the interconnection customer’s expense, the transmission provider or the transmission owner—not the interconnection customer—use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its affiliates, to procure land rights and permits necessary to construct, operate, and maintain Network Upgrades on property owned by persons other than the interconnection customer, transmission provider, or transmission owner.<sup>15</sup>

8. Accordingly, in the December 2023 Order, the Commission found that the Unexecuted Agreements have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful, and raise issues of material fact that cannot be resolved based on the record.<sup>16</sup> The Commission accepted the Unexecuted Agreements, suspended them for five months, to be effective May 20, 2024, and established paper hearing procedures to further develop the record on whether the Unexecuted Agreements are just and reasonable. The Commission also found that PJM’s *pro forma* ICSA appeared to be unjust, unreasonable,

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<sup>12</sup> PJM, Answer, Docket No. ER22-2931-000 at 10 (filed Nov. 1, 2022).

<sup>13</sup> *Id.*

<sup>14</sup> December 2023 Order, 185 FERC ¶ 61,202 at P 38.

<sup>15</sup> *Id.* (citing to *Standardization of Generator Interconnection Agreements & Procs.*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh’g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh’g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh’g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff’d sub nom. Nat’l Ass’n of Regul. Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); and *pro forma* LGIA, art. 5.13).

<sup>16</sup> *Id.* P 36.

unduly discriminatory or preferential, or otherwise unlawful because it was silent with regard to the entities responsible for using efforts to acquire third-party land rights.<sup>17</sup> Therefore, the Commission initiated a proceeding in Docket No. EL24-26-000 under section 206 of the FPA,<sup>18</sup> requiring PJM to show cause why “the default position, the prior rate”<sup>19</sup> remains just and reasonable, and consolidated Docket Nos. ER22-2931-000 and EL24-26-000. For the paper hearing, the Commission directed PJM to respond to a question focused on whether the Unexecuted Agreements, as well as PJM’s *pro forma* ICSA, are unjust and unreasonable or unduly discriminatory in not complying with the requirements of Order No. 2003 pertaining to the use of efforts to procure land rights from third parties.<sup>20</sup>

9. On January 19, 2024, PJM filed a motion to hold the show cause proceeding in Docket No. EL24-26-000 in abeyance for 180 days and to hold the paper hearing procedures in Docket No. ER22-2931-000 proceeding in abeyance for 60 days.<sup>21</sup> PJM stated that, while the applicable forms of agreements at the time the Unexecuted Agreements were tendered to New Market Solar were an ISA and ICSA, PJM has since commenced the transition to its reformed interconnection procedures. PJM stated that the applicable form of interconnection-related service agreements to be tendered after July 10, 2023 are the GIA and the stand-alone Construction Service Agreement (CSA), which were accepted by the Commission in November 2022.<sup>22</sup> On February 2, 2024, the Commission extended the deadline for submitting a response to the paper hearing question, and for PJM to respond to the show cause directive, to April 2, 2024.<sup>23</sup>

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<sup>17</sup> *Id.* P 41.

<sup>18</sup> 16 U.S.C. § 824e.

<sup>19</sup> December 2023 Order, 185 FERC ¶ 61,202 at P 40 (citing *W. Res., Inc. v. FERC*, 9 F.3d 1568, 1579 (D.C. Cir. 1993) (interpreting parallel provisions of the Natural Gas Act); *Tenn. Gas Pipeline Co. v. FERC*, 860 F. 2d 446, 453-56 (D.C. Cir. 1988) (in a remedial order under section 4 of the Natural Gas Act, the Commission must show the “the *presumptively* just and reasonable *existing* rate is no longer just and reasonable” (emphasis in original))).

<sup>20</sup> December 2023 Order, 185 FERC ¶ 61,202 at app. A.

<sup>21</sup> PJM, Motion, Docket Nos. ER22-2931-000 and EL24-26-000 (filed Jan. 19, 2024).

<sup>22</sup> *Id.* at 4 (citing *PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,162 (2022) (Queue Reform Order)).

<sup>23</sup> PJM, Notice Extending Comment Period, Docket Nos. ER22-2931-000 and

**B. Executed Agreements, Abeyance Motion, and May 2024 Order**

10. On April 2, 2024, in Docket No. ER22-2931-001, PJM filed the Executed Agreements. PJM stated that the parties “reached an agreement to resolve the outstanding issues and have executed [the Executed Agreements] as amended.”<sup>24</sup> PJM stated that the Executed Agreements reflect amended milestones in the ISA and amendments to Schedule J of the ICSA. PJM requested an effective date of May 20, 2024, for the Executed Agreements, consistent with the effective date previously set by the Commission in the December 2023 Order.<sup>25</sup>

11. Also on April 2, 2024, in Docket Nos. ER22-2931-000 and EL24-26-000, PJM filed a motion to continue to hold in abeyance the FPA section 206 proceeding established in the December 2023 Order (Abeyance Motion). In the Abeyance Motion, PJM asked the Commission to continue the abeyance of the FPA section 206 proceeding for an additional four months, until August 2, 2024.<sup>26</sup> PJM stated that it intended to submit an FPA section 205 filing to revise Tariff, Part IX, to resolve the issue of treatment of third-party land rights on a prospective basis.<sup>27</sup> PJM stated that the proposed revisions would build on and clarify the site control provisions that are included in PJM’s new interconnection rules.<sup>28</sup>

12. Several parties protested PJM’s Abeyance Motion, arguing that the Commission should grant summary judgment given PJM’s failure to respond to the show cause directive.<sup>29</sup> In response to protests, PJM filed an answer, which included a section titled “Response to Show Cause Directive,” within which PJM stated that a two-pronged approach would be necessary to address the concerns set forth in the December 2023 Order.<sup>30</sup> First, PJM stated that it was willing to propose modifications to its Tariff,

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EL24-26-000 (Feb. 2, 2024).

<sup>24</sup> Executed Agreements Transmittal at 2.

<sup>25</sup> *Id.* at 3 (citing December Order, 185 FERC ¶ 61,202 at P 1).

<sup>26</sup> Abeyance Motion at 1.

<sup>27</sup> *Id.* at 3 (citing December Order, 185 FERC ¶ 61,202 at P 41).

<sup>28</sup> *Id.* at 4 (citing Queue Reform Order, 181 FERC ¶ 61,162, *order on reh’g*, 184 FERC ¶ 61,006 (2023)).

<sup>29</sup> *See* PJM Developers April 2024 Motion for Summary Disposition.

<sup>30</sup> PJM April Answer at 8 (PJM Show Cause Answer).

Attachment P, Appendix 2, section 5.3 of the *pro forma* ICSA and “clarify responsibility for acquiring third-party land rights consistent with similar provisions that the Commission has previously accepted as just and reasonable in compliance with Order No. 2003.”<sup>31</sup> Second, PJM indicated that it would propose revisions to Parts VII, VIII, and IX of its Tariff in a subsequent FPA section 205 filing to make similar clarifications to its GIA and CSA. PJM stated that the same clarifications it proposes to make to the *pro forma* ICSA must be addressed in the *pro forma* GIA to ensure consistency and transparency across service agreements under the Tariff.

13. In the May 2024 Order, the Commission accepted the Executed Agreements for filing, suspended them for a nominal period to become effective May 20, 2024, subject to refund, and subject to the outcome of the paper hearing procedures previously established in the December 2023 Order.<sup>32</sup> The Commission also granted in part, and denied in part, PJM’s Abeyance Motion. The Commission denied PJM’s Abeyance Motion with respect to the New Market Solar ICSA and the *pro forma* ICSA, finding that it will consider PJM’s Show Cause Answer as a response to the show cause directive and the paper hearing with respect to the issue of whether the New Market Solar ICSA and the *pro forma* ICSA are unjust and unreasonable or unduly discriminatory in not complying with the requirements of Order No. 2003. Because PJM’s Show Cause Answer was filed as an answer to an answer, rather than as a response to the Commission’s FPA section 206 order, the Commission provided an additional opportunity for comments on PJM’s Show Cause Answer.<sup>33</sup>

14. The Commission granted PJM’s Abeyance Motion with respect to Tariff, Parts VII, VIII, and IX, finding that the abeyance would provide PJM and its stakeholders additional time to consider proposed FPA section 205 revisions to those sections of the Tariff.<sup>34</sup> On August 2, 2024, in Docket No. ER24-2690, PJM filed proposed revisions to Parts VII, VIII, and IX of its Tariff related to the procurement of third-party land rights.

## **II. Notice and Responsive Pleadings**

15. Notice of the show cause proceeding in Docket No. EL24-26-000 was published in the *Federal Register*, 89 Fed. Reg. 11828 (Feb. 15, 2024). Timely motions to intervene were filed by Vistra Corp.; Solar Energy Industries Association; Leeward Renewable Energy, LLC (Leeward); Invenergy Solar Development North America LLC,

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<sup>31</sup> *Id.*

<sup>32</sup> May 2024 Order, 187 FERC ¶ 61,126.

<sup>33</sup> *Id.* P 31.

<sup>34</sup> *Id.* P 32.

Invenergy Wind Development North America LLC, and Invenergy Storage Development LLC; Clearway Energy Group LLC; Dayton Power and Light Company; Dominion Energy Services, Inc.; Duquesne Light Company; PPL Electric Utilities Corporation; Copenhagen Infrastructure Partners, Inc. (CIP); FirstEnergy Services Company (FirstEnergy);<sup>35</sup> VC Renewables LLC; EDP Renewables North America LLC; Osagrove Flats Wind, LLC; and Illinois Generation LLC. Out-of-time motions to intervene were filed by Vesper Energy Development LLC (Vesper); Enbridge Holdings (Green Energy) L.L.C. (Enbridge); WIRES; Public Service Electric and Gas Company (PSEG); and Duke Energy Business Services LLC (Duke).<sup>36</sup> Leeward and Vesper (PJM Developers) filed an answer and motion for summary disposition in response to PJM's Abeyance Motion. CIP and Enbridge also filed answers to PJM's Abeyance Motion. PJM filed an answer to the CIP, PJM Developers, and Enbridge answers. CIP, PJM Developers, and SunEnergy<sup>37</sup> each filed an answer to PJM's answer.

16. Notice of the Executed Agreements filing was published in the *Federal Register*, 89 Fed. Reg. 25254 (Apr. 10, 2024), with interventions and protests due on or before April 23, 2024. No interventions were filed. SunEnergy filed comments.

17. Notice of the Site Control Amendments filing in Docket No. ER24-2690-000 was published in the *Federal Register*, 89 Fed. Reg. 65346 (Aug. 9, 2024), with interventions and protests due on or before August 23, 2024.<sup>38</sup> Timely motions to intervene were filed by Calpine Corporation; Exelon Corporation;<sup>39</sup> Rockland Electric Company; CIP;

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<sup>35</sup> FirstEnergy Service Company submitted the motion to intervene as agent for its affiliates American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic Interstate Transmission LLC, Keystone Appalachian Transmission Company, The Potomac Edison Company, Monongahela Power Company, and Trans-Allegheny Interstate Line Company.

<sup>36</sup> Duke states that it is filing on behalf of its public utility affiliates, Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.

<sup>37</sup> SunEnergy filed on behalf of New Market Solar.

<sup>38</sup> On August 2, 2024, PJM submitted, in Docket No. EL24-26-000, a notice of the Site Control Amendments filing. *See Elec. Tariff Filings*, 130 FERC ¶ 61,047 at P 15 (providing service requirements for compliance filings that are issued new root dockets). Notice of PJM's notice filing was published in the *Federal Register*, 89 Fed. Reg. 67,084 (Aug. 19, 2024), with interventions and protests due on or before August 22, 2024.

<sup>39</sup> Exelon Corporation states that its motion is on behalf of Atlantic City Electric Company, Baltimore Gas and Electric Company, Commonwealth Edison Company, Delmarva Power & Light Company, PECO Energy Company, and Potomac Electric



FirstEnergy; Dominion Energy Services, Inc.; Solar Energy Industries Association; Enbridge Holdings (Green Energy) L.L.C.; PPL Electric Utilities Corporation; American Electric Power Service Corporation;<sup>40</sup> Office of the Ohio Consumers' Counsel; Pine Gate Renewables, LLC; and PJM Developers. New Jersey Board of Public Utilities filed a notice of intervention. Comments were filed by SunEnergy and PJM Developers. PJM filed an answer to PJM Developers' comments. PJM Developers filed an answer to PJM's answer.

### **III. Discussion**

#### **A. Procedural Matters**

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2024), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed.<sup>41</sup>

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2024), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed in these proceedings because they have provided information that assisted us in our decision-making process.

20. We find that the most expedient path to resolving these matters is to consolidate Docket No. ER24-2690-000 with Docket Nos. ER22-2931-000, ER22-2931-001, and EL24-26-000, as these proceedings share common issues of law and fact.<sup>42</sup>

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Power Company.

<sup>40</sup> American Electric Power Service Corporation states that it files on behalf of its affiliates Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., and AEP West Virginia Transmission Company, Inc., and AEP Energy Partners, Inc.

<sup>41</sup> The Commission previously accepted the out-of-time motions to intervene of Vesper, Enbridge, WIRES, PSEG, and Duke in Docket No. EL24-26-000. May 2024 Order, 187 FERC ¶ 61,126 at PP 11, 28.

<sup>42</sup> See December 2023 Order, 185 FERC ¶ 61,202 at P 40 (citing *S. C. Elec. & Gas Co.*, 132 FERC ¶ 61,043, at P 23 (2010) (stating that the Commission consolidates proceedings when there are common issues of fact or law, and consolidation will

**B. Substantive Matters**

**1. PJM Interconnection Documents**

**a. Pro forma ICSA**

**i. PJM Filing**

21. In PJM's Show Cause Answer, PJM states that, to address the Commission's concerns in the December 2023 Order, PJM proposes to modify section 5.3 of the *pro forma* ICSA to more closely follow the language of the Commission's *pro forma* Large Generator Interconnection Agreement (LGIA).<sup>43</sup> PJM states that this modification would clarify responsibility for acquiring third-party land rights consistent with similar provisions that the Commission has previously accepted as just and reasonable in compliance with Order No. 2003.<sup>44</sup> Specifically, PJM proposes to replace section 5.3 of the *pro forma* ICSA with the following new language:

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

22. PJM also states that it would modify the third-party land rights language in section 23.3.3 of the *pro forma* GIA in the same manner as section 5.3 of the *pro forma* ICSA.<sup>45</sup>

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ultimately result in greater administrative efficiency)).

<sup>43</sup> PJM Show Cause Answer at 8.

<sup>44</sup> *Id.* at 9 (citing *N.Y. Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,159, at P 135 (2004)).

<sup>45</sup> *Id.* at 12.

PJM states that the proposed changes would apply prospectively to any ICSA tendered for execution under Part IV of the Tariff or any GIA or CSA tendered for execution under Part IX of the Tariff and would not be applied retroactively to executed service agreements.<sup>46</sup>

**ii. Responsive Pleadings**

23. PJM Developers and CIP support the substance of PJM's proposed revisions to section 5.3 of the *pro forma* ICSA.<sup>47</sup> CIP states that the proposed language closely mirrors section 5.13 of the Commission's *pro forma* LGIA and is fully compliant with the policy directives in Order No. 2003.<sup>48</sup> Indicated TOs state that, while they believe PJM's existing land acquisition process is just and reasonable, they assert that PJM's proposed revisions are consistent with language the Commission has accepted in compliance with Order No. 2003 under the independent entity variation standard.<sup>49</sup>

24. However, PJM Developers and CIP disagree with PJM that the proposed revisions to the *pro forma* ICSA should apply only prospectively.<sup>50</sup> PJM Developers and CIP argue that PJM's proposed revisions are clarifications that only serve to make explicit the

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<sup>46</sup> *Id.* at 3, 8. PJM states that it anticipates that there are very limited circumstances under which the *pro forma* ICSA would be used in the future because after July 10, 2023, projects in the queue are subject to the interconnection process set forth in Parts VII and VIII of the Tariff and will execute service agreements based on the *pro forma* templates in Part IX. *Id.* at 3 n.8, 5.

<sup>47</sup> PJM Developers June Comments at 2; CIP June Answer at 7.

<sup>48</sup> CIP June Answer at 7.

<sup>49</sup> Indicated TOs Comments at 3-4 (citing *N.Y. Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,159). Indicated TOs include The Dayton Power and Light Company;/ Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company; Exelon Corporation on behalf of its affiliates Atlantic City Electric Company, Baltimore Gas and Electric Company, Commonwealth Edison Company, Delmarva Power & Light Company, PECO Energy Company, and Potomac Electric Power Company; and FirstEnergy Service Company, on behalf of its affiliates American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic Interstate Transmission LLC, West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, and Trans-Allegheny Interstate Line Company.

<sup>50</sup> PJM Developers June Comments at 3; CIP June Answer at 9; CIP January Comments at 9-10.

obligations that are already imposed on transmission owners under the existing PJM Tariff.

25. In support of its argument, CIP points to PJM's representations in a 2004 compliance filing related to Order No. 2003, and the Commission's subsequent order accepting that compliance filing. Specifically, CIP explains that, on September 14, 2004, PJM filed an answer in its Order No. 2003 compliance docket (PJM 2004 Answer) in response to a protest from a generator that claimed that the PJM Tariff did not include language that was consistent with or superior to section 5.13 of the Commission's *pro forma* LGIA. CIP contends that, in the PJM 2004 Answer, PJM took the position that the PJM Tariff generally imposes an obligation on the transmission owner to acquire any property rights needed for the installation of interconnection facilities, which PJM clarified includes Network Upgrades.<sup>51</sup> CIP states that the Commission agreed with PJM in accepting PJM's compliance filing.<sup>52</sup>

26. CIP argues that, based on PJM's statements in the PJM 2004 Answer, the Commission should interpret the language in section 5.3 of PJM's *pro forma* ICSA to obligate the transmission owner, at the interconnection customer's expense, to use efforts similar to those it would exercise on its own behalf to acquire the land use rights and permits on land owned by third parties necessary to construct the Network Upgrades set forth in an interconnection agreement.<sup>53</sup> CIP contends that the Commission must answer the question of how PJM's Tariff should be interpreted for customers with existing ISAs and ICSAs as part of the FPA section 206 investigation because the paper hearing question was directed at PJM's *pro forma* ICSA.<sup>54</sup> CIP clarifies that it is not requesting retroactive relief in this proceeding; rather, CIP states that it is requesting the Commission to issue a ruling that interprets PJM's existing Tariff consistent with PJM's statements in the PJM 2004 Answer.

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<sup>51</sup> CIP June Answer at 9 (citing PJM 2004 Answer at 8 ("PJM transmission owners are generally obligated to build all transmission owner interconnection facilities (which include network upgrades) that are necessary to effectuate an interconnection . . .")).

<sup>52</sup> *Id.* at 9 (citing *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,099, at P 6 (2005) ("PJM adequately addresses the matter raised by pointing out that PJM Tariff section 82.2.1 requires transmission owners to acquire any property interests or rights of access to lands owned or controlled by third parties that are necessary to carry out the transmission owner's obligation to construct, operate, and maintain interconnection facilities.")).

<sup>53</sup> CIP June Answer at 10-11.

<sup>54</sup> CIP April Answer at 3.

27. CIP further states that Panther Grove Wind, LLC (Panther Grove), a wholly-owned subsidiary of CIP, is developing a 400 MW wind generating facility in PJM's service territory which is experiencing similar issues to the one identified by New Market Solar.<sup>55</sup> CIP claims that, after executing the ISA and ICSA with PJM and Commonwealth Edison Company (ComEd), CIP became aware that ComEd would require the interconnection customer to acquire land rights for 42 miles of fiber optic cable along ComEd's existing transmission easement that has been identified as a Network Upgrade. CIP states that this is an incredibly onerous task for the customer to identify landowners, negotiate necessary land rights, and convey those rights to ComEd. CIP states that, although it strongly disputes ComEd's interpretation of this land rights issue, the parties have reached a solution that will allow the project to move forward.<sup>56</sup> However, CIP states that, given the same issue has been raised by New Market Solar in this show cause docket, CIP believes that this legal issue of tariff interpretation should be addressed in this proceeding.

28. Indicated TOs argue that it is imperative and legally required that the Commission only apply changes to the Tariff on a prospective basis because the security provided by interconnection customers is based on the scope of work set forth in the Facilities Study Reports; thus, Indicated TOs contend that the security provided by an interconnection customer may not have accounted for the transmission owner performing land acquisition work.<sup>57</sup> Indicated TOs argue that modifying the scope of work would require re-estimation of costs, delays in project schedules, and adjustments to the required security provided by interconnection customers, which could undermine the shared goal of efficient project development.

29. In response to protests, PJM contends that CIP and PJM Developers erroneously characterize the land acquisition obligations of PJM's current *pro forma* ICSA.<sup>58</sup> PJM argues that the *pro forma* ICSA does not impose on transmission owners an obligation for acquiring property rights for network upgrades, as PJM Developers claim it does. Instead, PJM argues that the Tariff requires transmission owners "to exercise any rights of eminent domain they may have, to the same extent they would do so on their own behalf," in order to fulfill their obligation to acquire property rights necessary to

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<sup>55</sup> CIP states that the parties to the Panther Grove project executed an ISA and ICSA on July 27, 2023, which were accepted by the Commission on January 18, 2024. CIP January Comments at 4 (citing *PJM Interconnection, L.L.C.*, Docket No. ER23-2713 (Jan. 18, 2024) (delegated order)).

<sup>56</sup> *Id.* at 8.

<sup>57</sup> Indicated TOs Comments at 3.

<sup>58</sup> PJM April 2024 Answer at 6.

construct, operate, and maintain Transmission Owner Interconnection Facilities.<sup>59</sup> PJM states that, rather than strictly adopt the land acquisition requirements set forth in Article 5.13 of the Commission’s *pro forma* LGIA, PJM’s interpretation constitutes an independent entity variation from Order No. 2003 and was accepted by the Commission as just and reasonable.<sup>60</sup> In response to PJM, CIP reiterates that PJM admitted its Tariff places the responsibility on transmission owners to acquire third-party land rights, as opposed to placing that responsibility on transmission customers.<sup>61</sup>

**b. Site Control Amendments**

**i. Abeyance Motion and May 2024 Order**

30. In the Abeyance Motion, PJM explained that it was seeking an abeyance because “PJM intends to submit an FPA section 205 filing to revise Tariff, Part IX, to resolve the issue of treatment of third-party land rights on a prospective basis.”<sup>62</sup> PJM stated that holding the FPA section 206 proceeding in abeyance “will allow the Commission to determine the extent to which the new section 205 filing provides a just and reasonable resolution of the third-party land rights issue.”<sup>63</sup>

31. In the May 2024 Order, the Commission granted in part PJM’s Abeyance Motion, stating that it “will provide PJM and its stakeholders additional time to consider proposed section 205 revisions.”<sup>64</sup> In the May 2024 Order, the Commission stated that PJM will

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<sup>59</sup> *Id.* (citing PJM 2004 Answer at 8 (emphasis added)).

<sup>60</sup> PJM April 2024 Answer at 6 (citing *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,099, at P 6 (2005) (noting that PJM’s explanation of its interpretation of its Tariff requirements “resolves . . . concern[s] [regarding] whether a transmission owner must exercise its power of eminent domain on behalf of an interconnection customer if it is necessary to complete the interconnection”)).

<sup>61</sup> CIP May Answer at 4.

<sup>62</sup> Abeyance Motion at 3. PJM also cites to the portion of the December 2023 Order in which the Commission states that PJM can file a motion to hold the proceedings in abeyance to allow time for consideration of an FPA section 205 filing. *Id.* (citing December 2023 Order, 185 FERC ¶ 61,202 at P 45).

<sup>63</sup> *Id.* at 4.

<sup>64</sup> May 2024 Order, 187 FERC ¶ 61,126 at P 32.

have until the earlier of August 2, 2024, or the date on which PJM makes its FPA section 205 filing, to respond to the show cause order.

**ii. PJM Filing**

32. On August 2, 2024, pursuant to FPA section 206, PJM submitted the Site Control Amendments filing in Docket No. ER24-2690-000 in response to the Commission's statement in the December 2023 Order to "explain what changes to its Tariff it believes would remedy the identified concerns if the Commission were to determine that the Tariff has . . . become unjust and unreasonable or unduly discriminatory or preferential and, therefore, were to proceed to establish a replacement Tariff."<sup>65</sup> PJM explains that, while the show cause directive in the December 2023 Order applied to the *pro forma* ICSA, the applicable form of interconnection-related service agreements to be tendered after July 10, 2023 is the GIA or the stand-alone CSA under Tariff, Part IX, Subparts B and J, respectively, which were accepted by the Commission in November 2022.<sup>66</sup>

33. In its compliance filing, PJM explains that, under its new interconnection rules, a project developer is responsible for obtaining site control from its generating facility to the point of interconnection, including site control over required third-party land.<sup>67</sup> PJM states that, after evaluating the site control requirements under the new interconnection rules and the related provisions under its *pro forma* GIA, PJM "determined that its Tariff may not be sufficiently clear" as to the party responsible for engaging in efforts to acquire land in instances where an interconnection requires the expansion of the transmission owner's existing interconnection facilities or network upgrades beyond the Site.<sup>68</sup> PJM states that, under its new interconnection rules, its *pro forma* GIA generally mirrors the requirements for acquisition of third-party land rights from its *pro forma*

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<sup>65</sup> Site Control Amendments Filing at 1 (citing December 2023 Order, 185 FERC ¶ 61,202 at P 41).

<sup>66</sup> *Id.* at 8; *see* Queue Reform Order, 181 FERC ¶ 61,162.

<sup>67</sup> Site Control Amendments Filing at 11; *see also* PJM April 2024 Answer at 10 ("Under PJM's [new interconnection rules] a Project Developer is responsible for obtaining Site Control from its Generating Facility to the Point of Interconnection including in circumstances where the path to the Point of Interconnection crosses over third party land or where the Generating Facility requires a new substation.") (citing Tariff, Part VII, Subpart C, § 306(B)(5); Tariff, Part VIII, Subpart B, § 403(B)(5) (requiring demonstration of site control at the time of application for "100 percent of the Generating Facility Site including the location of the high-voltage side of the Generating Facility's main power transformer").

<sup>68</sup> *Id.* at 9-10.

ICSA, which was the subject of the December 2023 Order.<sup>69</sup> PJM states that, because section 5.3 of its *pro forma* ICSA has been superseded by the GIA, PJM is not proposing any changes to its *pro forma* ICSA in its Site Control Amendments filing. PJM states that, to remedy the concerns in the December 2023 Order, PJM proposes several revisions to Parts VII, VIII, and IX of its Tariff to clarify responsibility for acquiring third-party land (Site Control Amendments).<sup>70</sup>

34. PJM proposes to add the following language to the site control provisions of Tariff, Part VII, Subpart A, section 302, and Tariff, Part VIII, Subpart A, section 402:

During the course of the Facilities Study Procedures set forth in Tariff, Part VII, section 307(A)(7), if land or land rights in addition to those identified and secured by Project Developer pursuant to Tariff, Part VII, section 302(A) are determined to be necessary to install any part of the Transmission Owner Interconnection Facilities and/or Network Upgrades, and such land is property owned or controlled by persons other than Project Developer or Transmission Owner, then Transmission Owner shall, at Project Developer's expense, use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such person any land, rights of use, licenses, rights of way, and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner Interconnection Facilities and/or Network Upgrades upon such property.<sup>71</sup>

35. PJM further proposes to include the following language in new subsection (B) of Tariff, Part VII, Subpart A, section 302, and Tariff, Part VIII, Subpart A, section 402, that would allow the project developer and transmission owner to negotiate an alternative arrangement for procuring land:

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<sup>69</sup> PJM Site Control Amendments Filing at 9 (citing Tariff, Part IX, Subpart B, Appendix II, § 23.3.3).

<sup>70</sup> PJM states that it designated the tariff records as effective 12/31/9998 in eTariff, to be updated upon the Commission issuing an order accepting the filing. *Id.* at 3 n.8.

<sup>71</sup> Proposed Tariff, Part VII, Subpart A, § 302(B); Proposed Tariff, Part VIII, Subpart A, § 402(B).



Notwithstanding the foregoing, Transmission Owner and Project Developer may negotiate an alternative arrangement to procure the additional land and land rights determined to be necessary to install any part of the Transmission Owner Interconnection Facilities and/or Network Upgrades during the course of the Facility Study Procedures set forth in Tariff, Part VII, section 307(A)(7). Transmission Owner and Project Developer shall have no more than 20 Business Days following the start of the Final Agreement Negotiation Phase to conduct such negotiations and reflect the terms of any negotiated arrangement in the draft service agreement.<sup>72</sup>

36. In addition to the above changes, PJM also proposes to replace section 23.3.3 of its *pro forma* GIA with language stating that acquisition of land and/or land rights are subject to the requirements of Tariff, Part VII, Subpart A, section 302 and Tariff, Part VIII, Subpart A, section 402, as applicable.<sup>73</sup>

37. PJM argues that the Site Control Amendments are just and reasonable and resolve the issues raised in the December 2023 Order.<sup>74</sup> PJM states that the proposal clearly identifies the party responsible for engaging in efforts to obtain necessary third-party land rights and provides the project developer and transmission owner with the option to negotiate a just and reasonable alternative procurement proposal. PJM further states that its proposed Tariff changes support the intent of the site control requirements while not unduly burdening project developers—a balance that the Commission found to be just and reasonable.<sup>75</sup>

### iii. Responsive Pleadings

38. SunEnergy supports PJM's proposal, noting that it explicitly allows flexibility for project developers and transmission owners to negotiate and agree to alternative arrangements for the procurement of land rights.<sup>76</sup> PJM Developers state that they do not oppose PJM's clarification that transmission owners have an obligation to obtain land

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<sup>72</sup> Proposed Tariff, Part VII, Subpart A, § 302(B); Proposed Tariff, Part VIII, Subpart A, § 402(B).

<sup>73</sup> Proposed Tariff, Part IX, Subpart B, Appendix 2, § 23.3.3.

<sup>74</sup> PJM Site Control Amendments Filing at 15.

<sup>75</sup> *Id.* at 16 (citing Queue Reform Order, 181 FERC ¶ 61,162 at P 99).

<sup>76</sup> SunEnergy August 2024 Comments at 3.

from third parties for transmission owner interconnection facilities and network upgrades identified during the course of the Facilities Study Procedures.<sup>77</sup> However, PJM Developers contend that PJM's proposal does not fully resolve the issues raised by the December 2023 Order.

39. PJM Developers argue that PJM did not include the revisions to sections 5.3 of its *pro forma* ICSA and 23.2.2 of its *pro forma* GIA that PJM committed to making in PJM's Show Cause Answer.<sup>78</sup> PJM Developers state that, instead of submitting the language PJM committed to make in PJM's Show Cause Answer, PJM now proposes revisions that limit the transmission owner's obligation to acquire land rights to transmission owner interconnection facilities and network upgrades determined to be necessary "[d]uring the course of the Facilities Study Procedures."<sup>79</sup> PJM Developers contend that PJM's proposal leaves open the question of which party—the transmission owner or interconnection customer—has the obligation to acquire third-party property rights to the extent that transmission owner interconnection facilities and network upgrades are identified earlier in the study process.<sup>80</sup>

40. PJM Developers state that, while the Commission should approve PJM's proposed language clarifying the responsibility for acquiring third-party land rights for transmission owner interconnection facilities and network upgrades identified in the facilities study, the Commission also should direct PJM to revise its Tariff to state explicitly that transmission owners have the obligation for acquiring property rights from third parties for network upgrades regardless of the stage of the study process in which they are identified, except for any facilities for which an interconnection customer has an explicit obligation to demonstrate site control (i.e., the generating facility, interconnection facilities to the point of interconnection, and interconnection switchyards).<sup>81</sup>

41. In response to PJM Developers, PJM states that the Site Control Amendments fully resolve the concerns identified in the December 2023 Order and that no further revisions or clarifications are needed.<sup>82</sup> PJM states that, to the extent any additional land

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<sup>77</sup> PJM Developers August 2024 Protest at 5.

<sup>78</sup> *Id.* at 3.

<sup>79</sup> *Id.* at 4 (citing PJM Site Control Amendments Filing at 11; Proposed Tariff, Part VII, Subpart A, § 302 (A); Proposed Tariff, Part VIII, Subpart A, § 402(A)).

<sup>80</sup> *Id.* at 5.

<sup>81</sup> *Id.* at 7.

<sup>82</sup> PJM September 2024 Answer at 2.

or land rights would be needed to facilitate a generator interconnection, such land or land rights would be identified during the Facilities Study.<sup>83</sup>

42. PJM further states that Tariff, Part VII, Subpart A, section 302 and Tariff, Part VIII, Subpart A, section 402 outline site control evidentiary requirements and include land necessary to accommodate Transmission Owner Interconnection Facilities and Network Upgrades.<sup>84</sup> PJM states that the Site Control Amendments make clear that project developers have an obligation to demonstrate site control for Transmission Owner Interconnection Facilities and Network Upgrades at the point of interconnection, and transmission owners are responsible for obtaining, at the project developer's expense, any additional third-party land or land rights to the extent such third-party land or land rights are identified during the Facilities Study process.

43. In response to PJM, PJM Developers state that PJM's proposal does not identify which party has responsibility for securing land rights for network upgrades located *beyond the point of interconnection*.<sup>85</sup> PJM Developers state that PJM Manual 14H contradicts PJM's claim that the Facilities Study procedures are the only time land rights for transmission owner interconnection facilities or network upgrades would be identified. PJM Developers state that PJM Manual 14H makes clear that network upgrades are identified in the initial stages of the study process and well in advance of the facilities study.<sup>86</sup> PJM Developers state that, under PJM's Site Control Amendments, transmission owners could avoid the obligation to secure land rights from third parties by identifying land rights earlier in the study process. PJM Developers state that the Commission should direct PJM to revise its Tariff to state explicitly that transmission owners are obligated to make efforts, at the interconnection customer's expense, to obtain the property necessary to support the construction of network upgrades regardless of

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<sup>83</sup> *Id.* at 5.

<sup>84</sup> *Id.* at 4 (citing Tariff, Part VIII, Subpart A, § 402(A) ("Site Control is evidence provided by the Project Developer to Transmission Provider in relation to Project Developer's New Service Request demonstrating Project Developer's interest in, control over, and right to utilize the Site for the purpose of constructing a Generating Facility, Merchant Transmission Facilities, Interconnection Facilities, *and, if applicable, the Transmission Owner's Interconnection Facilities and/or Network Upgrades at the Point of Interconnection.*") (emphasis added by PJM)).

<sup>85</sup> PJM Developers September 2024 Answer at 2.

<sup>86</sup> *Id.* at 3 (citing PJM Manual 14H: New Service Requests Cycle Process §§ 4.2.1, 4.3 (effective July 26, 2023), <https://www.pjm.com/library/manuals>); *id.* § 4.2.1.

whether these upgrades are identified in the facilities study or other stages of the interconnection process.

44. PJM Developers also dispute PJM’s reading of the site control provisions set forth in sections 302 and 402 of the PJM Tariff. PJM Developers state that the site control provisions accepted by the Commission in November 2022 limit the site control demonstration that interconnection customers are required to make to land necessary to support the construction of their generating facilities, interconnection facilities up to the point of interconnection, and, if applicable, interconnection switchyards. PJM Developers argue that Tariff sections 302 and 402 do not address which party has the responsibility for acquiring land from third parties necessary for the construction of Network Upgrades because those sections define site control as “demonstrating Project Developer’s interest in, control over, and right to utilize the Site” and “Site” is limited to “real property . . . on which the Customer Facility is situated and/or on which the Customer Interconnection Facilities are to be located.”<sup>87</sup>

45. PJM Developers state that sections 302 and 402 do not require the interconnection customer to secure land from third parties beyond the Site. PJM Developers state that the Commission should not allow PJM to use this proceeding to expand the scope of the site control demonstration that customers must make under the Tariff. PJM Developers state that, in the queue reform proceeding, PJM consistently described the site control requirements as limited to the generating facility, interconnection facilities, and the interconnection switchyard, if applicable.<sup>88</sup> PJM Developers state that there is no basis for PJM’s assertion that it has obtained an independent entity variation from the Commission to depart from the requirements of Order No. 2003 and require interconnection customers to obtain land for network upgrades.

**c. Commission Determination**

**i. Pro Forma ICSA**

46. We begin by addressing PJM’s *pro forma* ICSA. In the December 2023 Order, the Commission’s preliminary analysis indicated that PJM’s *pro forma* ICSA may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful because:

While the pro forma Large Generator Interconnection Agreement established in Order No. 2003 identifies the entities responsible, at the interconnection customer’s expense, for using efforts, similar in nature and extent to

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<sup>87</sup> *Id.* at 5.

<sup>88</sup> *Id.* at 6-7 (citing Queue Reform Order, 181 FERC ¶ 61,162 at P 83).

those that the transmission provider or transmission owner typically undertakes on its own behalf or on behalf of its affiliates, to procure third-party land rights, the extent and nature of those land rights, and the standard related to the use of efforts to procure such rights, PJM's *pro forma* ICSA is silent in this regard as to acquiring land from a third party, which may create an unjust and unreasonable result for interconnection customers.<sup>89</sup>

47. In response to the paper hearing question, which asked PJM to address whether its *pro forma* ICSA is unjust and unreasonable or unduly discriminatory in not complying with the requirements of Order No. 2003, PJM does not argue that its *pro forma* ICSA is just and reasonable; rather, PJM proposes modifications to section 5.3 of its *pro forma* ICSA that PJM asserts would clarify the responsibility for acquiring third-party land rights.

48. On the record produced in this paper hearing, we find, pursuant to FPA section 206, that PJM's *pro forma* ICSA is unjust and unreasonable because it does not identify the entity responsible for using efforts to acquire land rights from third parties.<sup>90</sup> The Commission's *pro forma* LGIA adopted in Order No. 2003 requires that, at the interconnection customer's expense, the transmission provider or the transmission owner—not the interconnection customer—use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its affiliates, to procure land rights and permits necessary to construct, operate, and maintain Transmission Owner Interconnection Facilities and/or Network Upgrades on property owned by persons other than the interconnection customer, transmission provider, or transmission

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<sup>89</sup> December 2023 Order, 185 FERC ¶ 61,202 at P 41.

<sup>90</sup> We note that the paper hearing question was not about who will pay for the “efforts” to acquire the third-party land, but rather who will be responsible for engaging in those efforts. *See id.* at P 39 n.91. Indeed, the December 2023 Order confirmed that, in accordance with Order No. 2003, the interconnection customer (i.e. project developer) is responsible for expenses associated with efforts used to procure rights of use, licenses, rights of way, and easements from a third party that are necessary to construct, operate, maintain, test, inspect, replace or remove Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades upon such property. *See id.* (citing Order No. 2003-B, 109 FERC ¶ 61,287 at P 89). This order does not modify that these costs continue to remain those of the interconnection customer and are not passed on to retail customers.

owner.<sup>91</sup> In contrast, PJM's *pro forma* ICSA section 5 does not directly address the parties' obligations with respect to acquiring third-party land rights. PJM acknowledges that its tariff is "silent" as to the party responsible for acquiring land necessary to construct interconnection facilities beyond the Site.<sup>92</sup>

49. Having found that PJM's *pro forma* ICSA is unjust and unreasonable, we now turn to establishing a just and reasonable and not unduly discriminatory or preferential replacement rate. We agree with PJM and commenters that PJM's proposed modifications to section 5.3 of the *pro forma* ICSA<sup>93</sup> would clarify the responsibility for acquiring third-party land rights, consistent with similar provisions that the Commission has previously accepted as just and reasonable in compliance with Order No. 2003.<sup>94</sup> Accordingly, we direct PJM to submit, within 30 days of the date of this order, a

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<sup>91</sup> *Pro forma* LGIA, art. 5.13 ("If any part of Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades is to be installed on property owned by persons other than Interconnection Customer or Transmission Provider or Transmission Owner, Transmission Provider or Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades upon such property.").

<sup>92</sup> PJM, Answer, Docket No. ER22-2931-000 at 10 (filed Nov. 1, 2022).

<sup>93</sup> *See supra* P 21.

<sup>94</sup> *See, e.g.*, New York Independent System Operator, Inc., NYISO Tariffs, NYISO OATT, attach. X, § 30.14 (Appendices) (25.0.0), app. 4, art. 5, § 5.13 (Lands of Other Property Owners) ("If any part of the Connecting Transmission Owner's Attachment Facilities and/or System Upgrade Facilities and/or System Deliverability Upgrades is to be installed on property owned by persons other than Developer or Connecting Transmission Owner, the Connecting Transmission Owner shall at Developer's expense use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Connecting Transmission Owner's Attachment Facilities and/or System Upgrade Facilities and/or System Deliverability Upgrades upon such property.")

compliance filing that revises section 5.3 of the *pro forma* ICSA with the language proposed in PJM's Show Cause Answer.<sup>95</sup>

50. The changes we direct under FPA section 206 apply prospectively as of the date of this order. CIP and PJM Developers request that the Commission interpret the language in section 5.3 of the *pro forma* ICSA based on historical statements from PJM regarding Tariff section 82.2.1 and impose obligations to use efforts to acquire land on the transmission owner with respect to interconnection customers that have executed ICSAs. We decline to do so. The Tariff interpretation issue raised by CIP and PJM Developers was not the subject of the FPA section 206 proceeding. The paper hearing question set forth in the December 2023 Order was focused on whether PJM's *pro forma* ICSA is unjust and unreasonable or unduly discriminatory or preferential, not on the application of the PJM Tariff to interconnection customers with executed ICSAs. Moreover, the section 206 paper hearing proceeding did not focus on PJM's statements from its Order No. 2003 compliance proceeding, nor did it focus on the Tariff section (82.2.1) that CIP and PJM Developers rely on in support of their arguments. To the extent an interconnection customer disputes the terms and conditions of an existing, executed interconnection agreement based on statements in or interpretations of the customer's relevant interconnection documents, our actions here do not prejudice or limit its ability to file a complaint for the Commission's consideration.

**ii. Pro Forma GIA**

51. Section 23.3.3 of the *pro forma* GIA is substantively identical to section 5.3 of the *pro forma* ICSA.<sup>96</sup> As with PJM's *pro forma* ICSA, the *pro forma* GIA does not identify the entity responsible for using efforts to acquire land rights from third parties and does not directly address the parties' obligations with respect to acquiring third-party land rights. Therefore, we find that PJM's *pro forma* GIA is unjust and unreasonable for the same reasons that we find PJM's *pro forma* ICSA unjust and unreasonable. To establish a just and reasonable and not unduly discriminatory or preferential replacement rate, we direct PJM to submit, within 30 days of the date of this order, a compliance filing that revises section 23.3.3 of its *pro forma* GIA in the same manner that we are requiring PJM

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<sup>95</sup> See PJM Show Cause Answer at 9.

<sup>96</sup> We note that there are minor differences in terminology. For example, section 5.3 of the *pro forma* ICSA uses the terms "Interconnected Transmission Owner" and "Interconnection Customer," whereas section 23.3.3 of the *pro forma* GIA uses the terms "Transmission Owner" and "Project Developer." PJM acknowledges that the requirements of section 23.3.3 of the *pro forma* GIA "generally mirror" the requirements for acquisition of third-party land rights under section 5.3 of the *pro forma* ICSA. PJM Site Control Amendments Filing at 9.

to modify section 5.3 of its *pro forma* ICSA, to be effective as of the date of this order.<sup>97</sup> We reject PJM’s proposed Tariff revisions in its Site Control Amendments Filing. Those proposed revisions address site control requirements in Tariff, Part VII, Subpart A, section 302, and Tariff, Part VIII, Subpart A, section 402, which are beyond the focus of the paper hearing question.

## **2. New Market Solar’s Executed Agreements**

### **a. PJM Filing**

52. As discussed above,<sup>98</sup> in the May 2024 Order, the Commission accepted the Executed Agreements for filing, suspended them for a nominal period to become effective May 20, 2024, subject to refund, and subject to the outcome of the paper hearing procedures previously established in the December 2023 Order. The Commission found that “the [Executed Agreements] do not resolve the land rights issue the Commission previously set for paper hearing procedures” because the Executed Agreements

do not address the entity responsible for using efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its affiliates, to procure land rights and permits necessary to construct, operate, and maintain Network Upgrades on property owned by a third party, and PJM offers no explanation for the absence of those required terms.<sup>99</sup>

### **b. Responsive Pleadings**

53. SunEnergy requests that the Commission accept the Executed Agreements.<sup>100</sup> SunEnergy explains that it now prefers to be the party primarily responsible for undertaking efforts to acquire the land rights because it believes it can do so in a more efficient and timely manner, so long as DPL provides limited assistance with respect to the third-party landowner. Accordingly, SunEnergy explains that it agreed with DPL to

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<sup>97</sup> In submitting this compliance filing, PJM may use the *pro forma* GIA terminology (e.g., “Transmission Owner” and “Project Developer”) to align with the terminology used in the *pro forma* GIA.

<sup>98</sup> See *supra* P 13.

<sup>99</sup> May 2024 Order, 187 FERC ¶ 61,126 at P 30.

<sup>100</sup> SunEnergy June 2024 Comments at 6-8.



execute a Scope Change Form<sup>101</sup> documenting that mutually agreeable solution, rather than modify the Executed Agreements. SunEnergy states that it fully consented to this arrangement despite any opportunities that it may or may not have had to insist that DPL take efforts necessary to procure the land in question.

**c. Commission Determination**

54. We accept the Executed Agreements as filed. The Executed Agreements, as amended by the Scope Change Form, resolve the land rights issue set for paper hearing procedures. We decline to exercise our FPA section 206 authority to modify the Executed Agreements because the parties have resolved any disputed issues with respect to acquiring land rights and have mutually consented to revised terms.

The Commission orders:

(A) We direct PJM to submit, within 30 days of the date of this order, a compliance filing that revises section 5.3 of the *pro forma* ICSA, as discussed in the body of this order, to be effective as of the date of this order.

(B) We direct PJM to submit, within 30 days of the date of this order, a compliance filing that revises section 23.3.3 of the *pro forma* GIA, as discussed in the body of this order, to be effective as of the date of this order.

(C) The Executed Agreements are hereby accepted, as discussed in the body of this order, to be effective May 20, 2024.

By the Commission.

( S E A L )

Carlos D. Clay,  
Deputy Secretary.

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<sup>101</sup> *Pro forma* ICSA, § 7 (“Any change to the Scope of Work must be agreed to by all Parties in writing by executing a scope change document.”).