

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

The Office of the Ohio Consumers' Counsel)	
v.)	Docket No. EL23-105-000
PJM Interconnection, L.L.C., American)	
Electric Power Service Corporation, on behalf)	
of Ohio Power Company and AEP Ohio)	
Transmission Company, American)	
Transmission Systems, Inc., AES Ohio, a/k/a)	
The Dayton Power and Light Company, and)	
Duke Energy Ohio, LLC)	
)	

**ANSWER AND MOTION FOR LEAVE TO ANSWER
OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rules 212 and 213 of the Commission's Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor ("Market Monitor") for PJM Interconnection, L.L.C. ("PJM"),² submits this answer to the answer submitted by PJM on November 17, 2023, to the complaint filed by the Office of the Ohio's Consumer Counsel ("OCC") that initiated this proceeding filed, September 28, 2023 ("Complaint").

The Complaint states (at 38) "PJM's Tariff, the PJM Operating Agreement and the Ohio Transmission Utilities' transmission rates are ... unjust, unreasonable, and unduly

¹ 18 CFR §§ 385.212 & 385.213 (2023).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT"), the PJM Operating Agreement ("OA") or the PJM Reliability Assurance Agreement ("RAA").

discriminatory and preferential” because “[T]here is no regulatory authority overseeing the need for [supplemental] projects or the justness and reasonableness of the associated costs... PJM’s Tariff and the Ohio Transmission Utilities’ formula rates included therein lack a process for guaranteeing adequate regulatory oversight of the need, prudence and cost-effectiveness of Supplemental Projects in Ohio.”

The Complaint proposes (at 35–37) that the gap in regulatory oversight can be remedied by a directive that PJM (i) “develop a backstop mechanism that would be included in the PJM Tariff;” (ii) “develop an Independent Transmission Monitor that would review all local transmission projects;” and (iii) “use only a stated-rate approach to determining transmission rates.”

The OCC has identified a regulatory gap that should be remedied. The PJM rules are meant to provide just and reasonable oversight for transmission projects, and there is no alternative source of regulatory oversight. None of the parties opposing the Complaint show that just and reasonable regulatory oversight exists.³ The Complaint should be granted and a remedy should be determined.

A remedy to the issue identified by the OCC should be developed and approved in this proceeding.

I. ANSWER

A. The Complaint Identifies an Unjust and Unreasonable Regulatory Gap.

The Complaint states (at 38) “PJM’s Tariff, the PJM Operating Agreement and the Ohio Transmission Utilities’ transmission rates are ... unjust, unreasonable, and unduly discriminatory and preferential” because “[T]here is no regulatory authority overseeing the need for [supplemental] projects or the justness and reasonableness of the associated costs...

³ See Answer of PJM Interconnection, L.L.C., Docket No. EL23-105 (2023); Comments of WIRES, Docket No. EL23-105-000 (November 17, 2023) (“WIRES”); Motion to Intervene and Comments of Edison Electric Institute, Docket No. EL23-105-000 (November 17, 2023); and Protest of Indicated PJM Transmission Owners, Docket No. EL23-105-000 (November 17, 2023).

PJM's Tariff and the Ohio Transmission Utilities' formula rates included therein lack a process for guaranteeing adequate regulatory oversight of the need, prudence and cost-effectiveness of Supplemental Projects in Ohio."

Citing Order No. 2000 (at 8 n.4),⁴ the Complaint explains that the Commission "delegated its authority for oversight of the planning and cost of transmission facilities to RTOs," such as PJM.

PJM performs transmission planning through the Regional Transmission Expansion Plan ("RTEP"), which is set forth in Schedule 6 of the PJM Operating Agreement. Schedule 6 limits review to whether a project would "enable the transmission needs in the PJM Region to be met on a reliable, economic and environmentally acceptable basis,"⁵ and extends only to transmission projects needed to resolve region-wide system reliability violations based on PJM criteria, or for projects needed to meet state public policy goals such as renewable portfolio standards. Such projects are referred to as regional baseline projects, regional network upgrades or Public Policy Projects. The PJM Board approves the RTEP and it is filed with the Commission.

Certain projects, identified as "Supplemental Projects," are integrated into the RTEP, but are not reviewed by PJM or the PJM Board. Supplemental Projects are not approved by the Board, and they are not filed with the Commission. Rules applicable to Supplemental Projects are included in Attachment M-3 to the OATT. These rules are administered by PJM transmission owners. The rules provide a limited process for stakeholder review and comment, and provide that Supplemental Project sponsors may respond. The rules do not

⁴ See *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285, FERC Stats. & Regs. ¶ 31,089 (1999) ("Order No. 2000"); *order on reh'g*, Order No. 2000-A, 90 FERC 61,201 (2000) ("Order No. 2000-A).

⁵ OA Schedule 6 § 1.1.

provide for any regulatory review that could prevent a transmission owner from moving forward with a Supplemental Project exactly as proposed.

OCC states that Ohio does not provide regulatory review of Supplemental Projects. Other comments indicate that New Jersey, Maryland, Pennsylvania and Indiana do not provide regulatory review of Supplemental Projects.^{6 7}

Under the current rules, neither the Commission, PJM, the PJM Board nor the PJM states provide review of Supplemental Projects. The weak provisions of Attachment M-3 do not provide for regulatory review. OCC alleges in the Complaint that the lack of regulatory review is unjust and unreasonable, and should be remedied. OCC further notes that this is a significant oversight, stating (at 1–2, 24–27) that \$658 million in Supplemental Projects were planned for construction by Ohio electric utilities, and, since 2017, more than \$6 billion in Supplemental Projects have been added to their local transmission plans.

The Market Monitor agrees with the OCC that allowing large portions of a utility’s transmission spending to avoid regulatory review is unjust and unreasonable. Though Commission deference to state regulatory authority is appropriate in areas where state regulators can act, the Commission should exercise jurisdiction over transmission facilities

⁶ See Answer of the New Jersey Board of Public Utilities in Support of the Complaint of the Office of the Ohio Consumers’ Counsel, Docket No. EL23-105-000 (November 17, 2023) at 3–5; Comments of the Maryland Office of People’s Counsel, Docket No. EL23-105-000 (November 17, 2023) at 2–6; and Comments of the Pennsylvania Office of Consumer Advocate, Docket No. EL23-105-000 (November 17, 2023) at 3–5; and Indiana Office of Utility Consumer Counselor’s Motion to Intervene and Comments in Support of the Complaint Filed by the Ohio Office of Consumers’ Counsel, Docket No. EL23-105-000 (November 17, 2023) at 8–10.

⁷ See OA § 1 (“‘Supplemental Project’ shall mean a transmission expansion or enhancement that is not required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection and is not a state public policy project pursuant to Operating Agreement, Schedule 6, section 1.5.9(a)(ii). Any system upgrades required to maintain the reliability of the system that are driven by a Supplemental Project are considered part of that Supplemental Project and are the responsibility of the entity sponsoring that Supplemental Project.”).

where that is not the case. This regulatory gap makes PJM's Market Rules unjust and unreasonable. The Complaint should be granted.

B. Remedies.

The Complaint proposes (at 35–37) that the gap in regulatory oversight can be remedied by a directive that PJM (i) “develop a backstop mechanism that would be included in the PJM Tariff;” (ii) “develop an Independent Transmission Monitor that would review all local transmission projects;” and (iii) “use only a stated-rate approach to determining transmission rates.”

Supplemental Projects should be reviewed by the PJM Board and the Commission.

OCC proposes (at 4, 35–36) that the Commission implement the concept of an independent transmission monitor (“ITM”). The Commission inquired about an ITM in its advance notice of proposed rulemaking in Docket No. RM21-17.⁸ OCC proposes (at 35–36): “The ITM ... could assist FERC in overseeing the PJM regional transmission planning process—including review of the need for the projects, the prudence of the projects, and the cost-effectiveness of the projects ... [and] report recommendations to FERC.” OCC (at 4) cautions that it could take time to set up an ITM. A number of protests assert that an ITM would introduce costs, inefficiency, and administrative interference into the planning process.⁹ None of the arguments against an ITM have merit.

Including an ITM would be a reasonable component of a remedy to the regulatory gap identified in the complaint. The ITM would appropriately play a supporting role to the Commission, and would not itself approve Supplement Projects. An ITM with independence from stakeholders and RTO planning staff, technical knowledge of the markets, technical knowledge of the transmission system, and familiarity with the market rules and for its

⁸ See Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, Advanced Notice of Proposed Rulemaking, 176 FERC ¶ 61,024 (2021).

⁹ See PJM at 16–18; WIRES at 10–11; and EEI at 7–10.

region could assist the Commission's review of proposed Supplemental Projects without intruding on the Commission's regulatory authority.

Contrary to OCC and protestors concern about time and costs, an ITM could be implemented quickly and at low cost. The Market Monitor's comments filed in Docket No. RM21-17 address these issue.^{10 11} Including an ITM as a component of the remedy in this Complaint can be accomplished without significant difficulty and would contribute to efficient and effective regulation of Supplemental Projects.

The Commission could craft a remedy on the basis of OCC's proposal. The Commission could direct PJM to develop rules to resolve the issue raised by the OCC. The Commission could initiate a hearing to determine an appropriate remedy. Protests that the OCC has not provided an adequate remedy are unavailing. OCC has provided an ample basis to close the regulatory gap that it identifies. A remedy should be developed and approved in this proceeding.

II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to answers or protests unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.¹² In this answer, the Market Monitor provides the

¹⁰ Comments of the Independent Market Monitor for PJM, Docket No. RM21-17-000 (November 1, 2021) at 19.

¹¹ *See id.* at 18-23.

¹² *See, e.g., PJM Interconnection, L.L.C., 119 FERC ¶61,318 at P 36 (2007)* (accepted answer to answer that "provided information that assisted ... decision-making process"); *California Independent System Operator Corporation, 110 FERC ¶ 61,007 (2005)* (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C., 98 FERC ¶ 61,208 (2002)* (answer accepted to provide new factual and legal material to assist the Commission in decision-making process); *N.Y. Independent System Operator, Inc., 121 FERC ¶61,112 at P 4 (2007)* (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

Commission with information useful to the Commission's decision making process and which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this answer as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,



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Dated: December 4, 2023

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 in this proceeding.

Dated at Eagleville, Pennsylvania,
this 4th day of December, 2023.



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