UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Transmission Owners	)	Docket No. ER21-2282-000

PROTEST OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 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 these comments responding to the filing submitted by PJM on behalf of the PJM Transmission Owners ("TOs") on June 30, 2021 ("June 30th Filing"). The TOs propose to remove generation owners' ability to fund their own interconnections costs and instead require generation owners to use the TOs to finance interconnection costs.[3]

The June 30th Filing should be summarily rejected with prejudice because the TOs are not authorized to propose changes to the PJM market design. The rules that TOs propose to change were filed by PJM pursuant to its exclusive authority under Section 205, and they remain subject to such authority.[4]

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1 18 CFR § 385.211 (2020).

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").

3 The TOs propose to add a new Section 217.8 to the OATT and an associated pro forma agreement.

4 *See, e.g., PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025 (2004), *order on reh'g*, 110 FERC ¶ 61,099 (2005), (approving PJM compliance filing with Order No. 2003); *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,145 (2019), *order on reh'g*, 171 FERC ¶ 61,145 (2020) (approving PJM filing in compliance with Order No. 845); OATT § 9.2(a) ("PJM shall have the exclusive and unilateral right to file

If the June 30th Filing is not summarily rejected, the proposed revisions should be rejected because they have not been shown to be just and reasonable, and not unduly discriminatory. The proposed changes are unjust and unreasonable. The proposed changes are an explicit attempt to eliminate competition that serves the public interest. The result of eliminating competition will be to increase the cost to interconnect new generation and to create barriers to the entry of competitive new generation.

The June 30th Filing undermines the Commission's policy initiative for competitive transmission development.[5] Rather than eliminating competition to fund interconnections, the rules should extend competition to the financing of all transmission projects, including reliability projects in the RTEP ("Regional Transmission Expansion Plan").[6]

I. COMMENTS

A. The June 30th Filing Is Unauthorized and Should Be Rejected.

TOs cite to Section 9.1(a) of OATT (at 20–21) as the basis for their authority to direct PJM to submit the June 30th Filing. Section 9.1(a) provides that TOs have "the exclusive and unilateral rights to file pursuant to Section 205 of the Federal Power Act and the [Commission's] rules and regulations thereunder for any changes in or relating to the establishment and recovery of the Transmission Owners' transmission revenue requirements or the transmission rate design under the PJM Tariff."

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pursuant to Section 205 of the Federal Power Act and the FERC's rules and regulations thereunder to make changes in or relating to the terms and conditions of the PJM Tariff (including but not limited to provisions relating to creditworthiness, billing, and defaults) as well as all charges for recovery of PJM costs.").

5 *See, e.g.*, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011).

6 *See, e.g.*, *2020 State of the Market Report for PJM*, Vol. 2, Section 12: Generation and Transmission Planning (March 11, 2021) at 573.

If the interconnecting generator elects to fund their interconnection costs, there is no revenue requirement and therefore no cost of service rate. TO filing rights do not apply unless there is a cost of service rate.

PJM has the exclusive authority to "make changes in or relating to the terms and conditions of the PJM Tariff."[7] The TOs are proposing to change a component of the PJM market design that was previously proposed by and filed by PJM and approved by the Commission.[8] PJM filed to establish that its market design was consistent with or superior to the Commission's rule for generator interconnections.[9] The Commission accepted PJM's compliance filing.[10] The TOs cannot claim to have "exclusive and unilateral rights to file under Section 205" to change rules that were established by PJM and accepted by the Commission under PJM's exclusive authority as an RTO. The June 30th Filing is unauthorized and should be rejected with prejudice, and without the need to determine its lack of merit.

B. TOs Fail to Demonstrate that Their Proposal Is Just and Reasonable and Not Unduly Discriminatory.

TOs have not demonstrated that the proposed revisions to the PJM market design are just and reasonable, and are not unduly discriminatory. On the contrary, the proposed changes are inconsistent with regulation through competition and competitive markets. The

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7 OATT § 9.2.

8 *See, e.g., PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025 (2004), *order on reh'g*, 110 FERC ¶ 61,099 (2005), (approving PJM compliance filing with Order No. 2003); *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,145 (2019), *order on reh'g*, 171 FERC ¶ 61,145 (2020) (approving PJM filing in compliance with Order No. 845); OATT § 9.2(a) ("PJM shall have the exclusive and unilateral right to file pursuant to Section 205 of the Federal Power Act and the FERC's rules and regulations thereunder to make changes in or relating to the terms and conditions of the PJM Tariff (including but not limited to provisions relating to creditworthiness, billing, and defaults) as well as all charges for recovery of PJM costs.").

9 *Id*.

10 *Id*.

proposed revisions are not just and reasonable and are unduly discriminatory. Granting TOs the right to fund interconnection costs unjustly and unreasonably removes the ability of competitive market entrants to fund interconnections in the most competitive manner.

Generation and transmission are substitutes in many cases. TOs in PJM own generation. The TOs' proposal would result in unjust and unreasonable increases in the costs of competitive entry.

C. TOs Do Not Have the Right to Impose Noncompetitive Interconnection Costs on New Entrant Generation Resources.

TOs do not earn a return on investments made by others, and TOs claim (at 17–20) the proportion of interconnection investments funded by new entrants is growing. The TOs fail to explain why this is not fully consistent with competitive markets and fully consistent with the public interest. The trend identified by TOs (*id*.) serves the public interest and should be preserved, not undermined.

The requirement to permit new entrants to fund their own interconnection costs does not require TOs to operate as non profit entities. No entity in any competitive market has the right to earn a return on another entity's investments. The asserted business model does not create such a right, regardless of whether such a right would make the TOs better off. The TOs are appropriately compensated for operating the facilities.

Investors in competitive new generation have an incentive to keep the costs of interconnection low. If self funding is less costly than TO funding, it makes sense for competitive new generation entrants to choose that option. If the current incentive for TOs to keep their funding costs down were eliminated, as the TOs propose, the TOs would have an incentive to increase rather than reduce costs.

Given that there are approximately 135,000 MW of renewable and intermittent and hybrid resources currently in PJM interconnections queues, the impact of the TOs' efforts to

increase interconnection costs will fall disproportionately on such resources.[11] To the extent that vertically integrated TOs are permitted under state regulations to include renewable resources in rate base, or other resource types in rate base, the TOs have an incentive to increase the costs of competitors.[12]

The current PJM market rules that require TOs to compete to fund interconnection costs should be preserved. Competitive funding of interconnection costs will continue to allow for the entry of new generation at the lowest possible cost, establish just and reasonable rates, and best serve the public interest. The goal should be to enhance the PJM market rules to require competition to fund all transmission projects.[13]

Allowing funding by new entrants is also consistent with the requirement in Order No. 845 to allow new entrants to construct their own interconnection facilities.[14]

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[11] See the *2021 Quarterly State of the Market Report for PJM: January through March*, Section 12: Generation and Transmission Planning, Planned Generation Additions, Table 12-15: Current project status (MW) by unit type: March 31, 2021 <https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2021/2021q1-som-pjm.pdf>.

[12] See the *2021 Quarterly State of the Market Report for PJM: January through March*, Section 12: Generation and Transmission Planning, Relationship between Project Developer and Transmission Owner, Table 12-42: Relationship between project developer and transmission owner for all interconnection queue projects MW by unit type: March 31, 2021 <https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2021/2021q1-som-pjm.pdf>.

[13] *See, e.g.*, *2020 State of the Market Report for PJM*, Vol. 2, Section 12: Generation and Transmission Planning (March 11, 2021) at 573.

[14] *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 at P 85 (2018) ("Further, we find that limiting exercise of the option to build to circumstances where the transmission provider cannot meet the interconnection customer's requested dates is not just and reasonable. The limitation restricts an interconnection customer's ability to efficiently build the transmission provider's interconnection facilities and stand alone network upgrades in a cost-effective manner, which could result in higher costs for interconnection customers.").

D. Generator Funded Upgrades Result in a Competitive Assignment of Risk.

TOs claim (at 13–17) that rules allowing for interconnecting generators to fund their upgrades for which they are responsible denies the TOs compensation for the risks associated with owning and operating the interconnection facilities. TOs cite to precedent holding that the Commission must "ensure that the established rates 'fairly compensate investors for the risks that they have assumed.'"[15]

TOs assume no risk associated with the funding and construction of interconnection facilities when the new entrants provide the funding.

The TOs are allowed to charge and recover costs related to the operation and maintenance of the interconnection facilities.

The TOs fail to address the fact that the TO proposal would impose significant new risks on new entrant generation by exposing such new entrants to an uncertain stream of costs for a 20 year period based on the TOs' formula rates.

E. TOs Misrepresent the *Ameren* Decision

TOs claim (at 3, 9) that a recent remand order by the D.C. Circuit made findings consistent with the TOs' positions.[16] The *Ameren* remand order made no findings, but the order does raise concerns based on inaccurate assumptions about the relevant facts. The critical point is that Court did not make findings or decide these claims, but remanded the matter to the Commission. The Commission declined the opportunity to further develop the record at that time.[17] In orders issued subsequent to *Ameren*, the Commission allowed MISO Transmission Owners the option to fund Network Upgrades, but did so on the basis

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15 June 30th Filing at 30, citing In re Permian Basin Area Rate Cases, 390 U.S. 747, 792 (1968).

16 Ameren Servs. Co. v. FERC, 880 F.3d 571 (D.C. Cir. 2018) ("*Ameren*")

17 *See Midcontinent Indep. Sys. Operator, Inc. & Otter Tail Power Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,158 at P 28 (2018) ("Ameren Remand Order"), *reh'g denied*, 169 FERC ¶ 61,233 (2019).

of what it acknowledged was an insufficient record.[18] Neither the *Ameren* remand order nor subsequent Commission decisions prevent the correct decision in this case.

II. CONCLUSION

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

Respectfully submitted,

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[18] *See* Ameren Remand Order at PP 28–33 (2020).

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 28th day of July, 2021.

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