

needed to administer the equivalent of a request for proposals process (“RFP”). The Market Monitor will also perform an independent analysis of competing projects, and will coordinate with and share such analyses with PJM.

PPL takes issue with the Market Monitor’s explanation, in the Market Monitor’s answer filed March 16, 2020, that cost containment is legally and logically possible. PPL fails to identify any legal obstacles to the Cost Containment Proposal. That there is potential to improve upon the Cost Containment Proposal is no reason to reject it. PJM’s Cost Containment Proposal can be approved as filed. The PJM proposal can be approved with minor clarifications and compliance directives that enhance it. PJM’s Cost Containment Proposal would serve as a good foundation for increasing the role of competition in transmission in PJM.

I. ANSWER

A. There Is No Legal Obstacle to Technical Evaluations of Cost Containment Proposals.

Reaching back to 1922 case law that predates the Federal Power Act and federal regulation of interstate transmission of electricity, PSEG continues its argument that legal obstacles prevent PJM from evaluating commitments by transmission providers to limit their annual revenues to a defined cap, which would limit the cost to transmission customers.⁴ No such obstacles exist. The Cost Containment Proposal does not require PJM to engage in ratemaking, speculative or otherwise. PJM’s task is not fundamentally different from that of any entity administering an RFP. Conducting RFPs require technical expertise and objectivity, but no legal precedent prevents PJM from engaging in this activity. PJM has experience conducting RFPs. PJM has already engaged in a process to review multiple proposals to address transmission issues and PJM has selected the best proposals per its

⁴ PSEG at 2–3, citing *Keogh v. Chi. & Nw. Ry. Co.*, 260 U.S. 156 (1922).

criteria.⁵ The Market Monitor will also perform an independent analysis of competing projects, and will coordinate with and share such analyses with PJM.

There is no reason to confuse practical challenges that PJM may face in performing technical evaluations with legal obstacles. For example, PSEG argues (at 3–5) that it can be difficult to specify ROE (rate of return on equity) values in cost containment because Commission policies affecting ROE may change after a project is selected. Regulatory risk is nothing new in the industry. Competition means that investors take risks rather than customers. PSEG argues that PJM will have difficulty comparing projects including revenue limits, and that this means that the Commission will have difficulty reviewing PJM's determinations under the just and reasonable standard. Both PJM and the Commission can perform their roles under the Cost Containment Proposal. PSEG's arguments that alleged technical difficulties in administering the Cost Containment Proposal create insurmountable legal obstacles have no merit and should be disregarded.

Competition from transmission providers willing to enter into a firm commitment to limit the cost of transmission to customers is a significant issue for transmission providers who prefer to continue operating under a cost of service model with no such limits. None of the objections raised by PSEG are reasons to create barriers to entry and inefficiently limit competition.

B. It Is Undisputed that Transmission Owners May Enter Into Contractually Binding Limits on Revenues.

PPL concedes (at 4): “[I]t is undoubtedly true that a public utility may limit by contract its own FPA Section 205 filing rights.” PPL does not dispute the key legal requirement for the successful implementation of PJM's Cost Containment Proposal. If

⁵ See Competitive Planning Process, PJM Website, which can be accessed at: <https://www.pjm.com/planning/competitive-planning-process.aspx>.

revenue limits are binding, PJM can and must reasonably take such revenue limits into account when deciding among competing projects.

PPL nevertheless asserts that the Designated Entity Agreement (“DEA”) that a selected project developer would execute with PJM is inadequate, arguing (*id.*): “[T]he Designated Entity is not voluntarily giving up its filing rights by signing a DEA with a cost containment commitment.”⁶ A DEA is an agreement and such an agreement can include a provision for cost containment which includes a voluntary agreement to not exceed a defined revenue level. Whatever purpose DEAs may have served prior to PJM’s Cost Containment Proposal, DEAs would be expanded to serve the new purpose of confirming revenue limits after approval of the Cost Containment Proposal. It is not necessary to determine that PJM is a transmission customer or is acting on behalf of transmission customers for the Commission to recognize the existence of a binding revenue limit that applies to the transmission developer.⁷

If, nevertheless, the Commission shares PPL’s concerns about DEAs including a revenue limit, an order approving the revenue limit could clarify that DEAs can incorporate binding revenue limits. In the alternative, there is no reason why PJM could not be directed to execute and/or file with the Commission, a separate revenue limit agreement. Any such

⁶ PJM Manual 14F states: “Greenfield transmission projects that originate through an RTEP proposal window will utilize the Designated Entity Agreement (DEA) to assign construction responsibility for the identified project to the Designated Entity. The Designated Entity Agreement is a two party agreement between the Designated Entity and PJM. The terms and conditions of the agreement govern the construction period of the transmission project and define specific rights and obligations of the parties. The form for the DEA can be found in the [OATT], Attachment KK.” PJM Manual 14F (Competitive Planning Process) § 9.1.1 (2020).

⁷ The competitive transmission development policy initiated in Order No. 1000 significantly changes PJM’s role in planning. PJM is now evaluating competing proposals taking costs into account. Although PJM is not itself a transmission customer, it is plainly procuring transmission facilities on behalf of transmission customers based on the reliability and market efficiency and other needs of the grid. PJM’s proper role in administering competitive transmission development is not fundamentally different from its role in administering competitive power markets and in procuring ancillary services and similar services.

clarifications and revisions so ordered would be consistent with the plain intent of Order No. 1000 and PJM and PJM stakeholders in the development and filing of the Cost Containment Proposal in furtherance of Order No. 1000. None of the concerns raised by PPL prevent constructive action in this proceeding, nor the advancement of important policy goals.

Competition from transmission providers willing to enter into a firm commitment to limit the cost of transmission to customers is a significant issue for transmission providers who prefer to continue operating under a cost of service model with no such limits. None of the objections raised by PPL are reasons to create barriers to entry and inefficiently limit competition.

C. Cost Commitments Can Be Applied Consistent with the Commission's Authority.

PPL argues (at 2): “[T]he Commission lacks the authority to enforce [a cost] commitment when presented with a transmission owner’s or designated entity’s Section 205 filing proposing a just and reasonable rate under the FPA.” PPL has not identified a legal obstacle to the Commission’s consideration of such revenue limits. The Commission determines what is just and reasonable, and can and should take cost commitments into account when applying that standard to transmission owner filings under Section 205. It would be unjust and unreasonable, unduly discriminatory, and inconsistent with the public interest, to approve a higher rate than the rate that would result from a revenue limit, especially when such revenue limit was a consideration in PJM’s selection of a project over competing proposals. To whatever extent it is necessary, an order approving PJM’s Cost Containment Proposal can and should clarify that the Commission has the authority to accept and enforce revenue limits when approving transmission rates and applying the just and reasonable standard.

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.⁸ In this answer, the Market Monitor provides the 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.

⁸ 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).

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: March 18, 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 18th day of March, 2020.



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