UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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PJM Governance and Stakeholder Reforms	)	Docket No. AD26-7-000
	)	

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to the notice requesting post-conference comments issued in this proceeding, July 30, 2026 ("Notice"), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM, submits this response. On July 23, 2026, the Commission convened a technical conference to discuss "to discuss [PJM's] governance and stakeholder processes, with a particular focus on identifying and evaluating concrete, actionable reforms to improve PJM's ability to address operational and market needs in a timely and efficient manner." The Market Monitor responds below to the questions included in the Notice.

The dispute over whether the PJM Board should have FPA Section 205 rights over the entire OA and OATT of PJM is framed incorrectly by many. The requirement to have a two thirds majority of the PJM Members Committee in order to make a Section 205 filing does not provide "veto rights" to any sector and does not allow the members or any group or sector of members to "hold PJM hostage" as some have alleged. The PJM Board can make a filing under FPA Section 206 at any time and without limitation. The most significant points about FPA Section 205 filings are that they must meet only a lower standard than FPA Section 206 filings, and that Section 205 filings limit the ability of the Commission to modify the filing consistent with Commission policy.[1]

PJM prefers the lower standard of a Section 205 filing in order to perpetuate what can be thought of as "PJM deference" by the Commission to PJM rather than the more commonly understood "Chevron deference" by the courts to the Commission. To the extent that any Chevron deference remains in practice, that translates effectively to PJM deference by the courts in the case of FPA Section 205 filings by PJM.

PJM should not have unilateral FPA Section 205 authority over any part of the OA or the OATT. PJM's Section 205 filing authority over Attachment DD to the OATT, which governs the PJM Capacity Market, has not led to any improvements in market design outcomes and has not led to a more efficient process. A lower barrier to filing has resulted in a series of poor capacity market design choices that were approved in part because they did not have to meet the higher Section 206 filing standards.

PJM and others have cited to independence and the freedom to act quickly as reasons to support Section 205 rights for PJM. That has not been the result of PJM's Section 205 rights over Attachment DD and no one has argued that the actual experience of PJM making 205 filings related to Attachment DD demonstrates any of the alleged benefits of FPA Section 205 rights for PJM. In addition, the goal should be to help ensure filings that improve the PJM markets and serve the public interest. The goal is not to file quickly and the goal is not to file subject to an inferior standard of review. The goal is to make good filings that serve the public interest.

Most fundamentally, the Section 205 versus Section 206 rights argument must be evaluated in the broader context. The PJM Board cannot be expected to make filings in the public interest until the independence of the PJM Board is defined and assured. Although

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[1] *See* NRG Power Mktg., LLC v. FERC, 862 F.3d 108 (2017) (FERC must approve or reject a proposal in light of its purpose and objectives in a Section 205 filing).

there is a notable lack of comments on the topic, the independence of PJM staff and the goals of PJM staff must also be addressed. The PJM Board relies almost exclusively on PJM staff for information, for recommendations about policy and for the details of filings. The PJM Board will not be independent until the PJM staff is independent. The goals and obligations of the PJM staff must be clearly stated, verifiable and enforceable.

I. RESPONSES TO QUESTIONS

1. Should Board members' terms be extended to five or more years?

Comments: No. There is no reason to extend Board members' terms from three to five or more years. The reasons advanced for such extension are based on Board independence. Extending the Board terms does not address the underlying issues undermining independence and therefore does not produce the desired result. The goal should be to directly ensure Board independence and to separately directly ensure PJM staff independence.

2. Should there be a maximum number of years that a Board member may serve (e.g., 10 years)?

Comments: No. There is no reason to limit the duration of Board members' service. The reasons advanced for such a limitation are based on Board independence. But limiting the duration of Board members' service does not address the underlying issues undermining independence and therefore does not produce the desired result. The goal should be to directly ensure Board independence and to separately directly ensure PJM staff independence.

3. Should the Board member qualification rules be revised to provide a preference for some Board members that reside in the PJM region?

Comments: Yes. It would be preferable for some Board members to have resided in the PJM region for a reasonable period of time and not simply to move to the region if added to the Board. Moving to the PJM region after selection as a Board member or moving to the PJM region in order to establish residency to become eligible for Board membership should not qualify as meeting this requirement. If the purpose of the requirement is to provide some assurance that the Board member understands the region, such moves do not qualify. Most importantly, such a preference for PJM residency should not override the current requirement that there be no conflict of interest.[2] Avoiding conflicts of interest should take precedence over residency preference.

4. Should the conflict-of-interest rules be revised to reduce the cooling off period for Board members from two years to one year?

Comments: No. Avoiding conflicts of interest of all kinds is definitional in maintaining an independent Board. As part of ensuring the independence of the Board, it is essential to limit the potential influence of future job prospects on Board decision making. This requirement is core to maintaining Board independence. For those who do not view membership on the PJM Board as a steppingstone to their next job with a PJM market participant, this requirement should not be a hardship.[3] Directly working for government agencies whose purpose is to serve the public interest should not be considered a conflict of interest, e.g. a public utility commission.

5. Should restrictions on Board communications be relaxed to enable more communication between the Board and stakeholders?

Comments: No. Rather than permitting additional lobbying by those market participants with more resources and specific financial interests in detailed rules, the current rules should remain in place or be strengthened. The ex parte rules are essential to prevent hidden and undisclosed lobbying by influential participants and to maintain public confidence in the PJM markets. The goal should be more open communication with the Board by all parties with an interest in PJM markets. All Board meetings should be open and public

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[2] OA § 7.2.

[3] OA § 7.2 ("A Board Member shall not be, and shall not have been at any time within two years of election to the PJM Board, a director, officer or employee of a Member or of an Affiliate or Related Party of a Member.").

with the exception of those meetings or parts of meetings that address security or personnel issues.

6. In order to increase transparency, should Board votes be made public or the Board be required to explain its reasoning?

Comments: Yes. All Board meetings should be open and public. Board votes should be public, recorded and posted publicly. The Board should be required to explain the reasons for its actions and why its actions are in the public interest.

7. In order to increase transparency, should some Board meetings be open or available to the public?

Comments: Yes. All Board meetings should be open and public with the exception of those meetings or parts of meetings that address security or personnel issues. It is essential that the Board meetings and decision making process be public and open to scrutiny. The Board makes decisions affecting 67 million people living in the PJM area, the financial well being of those 67 million people, and the financial health of the current and future members of PJM.

8. Should PJM's governing documents be revised to explicitly state that the responsibility of PJM and its Board is to serve the public interest?

Comments: Yes. PJM and the PJM Board make decisions affecting 67 million people living in the PJM area, the financial well being of those 67 million people, and the financial health of the current and future members of PJM. PJM acts as an unelected and unappointed regional government with extraordinary powers. PJM's history and the recent negative reactions of the PJM Board and PJM staff to the active role of state governments in the PJM rule making process illustrate the fact that the elected and appointed representatives of the people of PJM need to be assured that it is the explicit obligation of the PJM Board and the PJM staff to serve the public interest. It is equally important that both the PJM Board and the PJM staff have that obligation. Both the PJM Board and the PJM staff should have that explicit obligation memorialized in the PJM OA and OATT. The PJM staff has a very significant impact on the PJM Board through the control of information to the Board and through the provision of options to the Board. Board independence cannot be assured without PJM staff independence. The goal of the PJM staff should not be to be a "member driven organization" with an assumption that the goals of influential PJM members be accommodated. The explicit and verifiable and enforceable goal of the PJM staff should be to serve the public interest even when opposed by influential members of PJM.

9. Should state representatives have at least one voting member on the Nominating Committee?

Comments: Yes. The composition of the Nominating Committee is one of the key elements of ensuring and maintaining Board independence. It is essential to ensure the independence of the PJM Board from influence by PJM members that state representatives have multiple voting members on the Nominating Committee. The number of the state representatives plus the number of Board representatives should constitute a majority of the Nominating Committee in order to ensure the independence of the PJM Board and to ensure that narrow financial interests of any group or coalition of members do not determine the selection of Board members. In addition, the process should ensure that the consultant chosen to select and pre screen Board candidates not look in all the usual places for Board members. The consultant should be required, by contract, to search much more broadly for Board members to include, for example, public advocates and private citizens with an interest in ensuring that PJM power markets serve the public interest, and should allow self nominations.

10. Should PJM adopt public performance metrics and tie management compensation to their achievement?

Comments: Yes. PJM management compensation should be tied to their success in reaching their defined and enforceable and verifiable obligation to serve the public interest. Equally important, PJM management compensation should be in no way whatsoever linked to the satisfaction of PJM members. This is essential to ensuring that the PJM staff is independent from member influence and ensuring that PJM staff decisions and recommendations are not made with the goal of addressing the concerns of specific members or groups of members.

11. Should the stakeholder process be advisory, i.e., stakeholder votes only inform the Board?

Comments: No. Approval of the Members Committee should continue to be a requirement of PJM and the PJM Board making filings under Section 205 of the Federal Power Act.

The OA constitutes PJM as an LLC, which makes the senior committees part of the PJM governance structure, along with PJM staff and the PJM Board. The Courts essentially recognized this broad governance structure as the "public utility" insofar as PJM Section 205 filings are concerned in *NRG*. [4] The Court decided that PJM staff could not voluntarily agree to conditions in Commission orders changing the core purpose of a proposal because the proposal is the product of decisions made in the stakeholder process. PJM's proposal to have unilateral FPA Section 205 rights is inconsistent with the Court's finding in *NRG*.[5]

PJM does not need and should not be granted FPA Section 205 rights over the OA and OATT. PJM's current FPA Section 205 rights over Attachment DD to the OATT should be revoked.

12. Should PJM have Section 205 filing rights over the energy market and ancillary services unencumbered by the requirement to obtain approval of two-thirds of the Members Committee?

No. Approval by the Members Committee is not an encumbrance. Approval by the Members Committee is an essential part of PJM governance.

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4 *See* NRG Power Mktg., LLC v. FERC, 862 F.3d 108 (2017).

5 *Id*.

The essential point about Section 205 filing rights is that such rights simply lower the standard for the Commission to accept a filing. Section 205 rights permit the PJM Board to make filings that are not the best option but that meet only the vaguely defined just and reasonable standard even if they are demonstrably inferior to submitted alternatives. The PJM Board and PJM should be required to meet the tests of a Section 206 filing when PJM makes filings to change the PJM rules by following the rules of Section 206 filings and having the Commission apply Section 206 standards of approval.

PJM does not need Section 205 filing rights over energy market and ancillary services market rules, which are included in Schedule 1 to the Operating Agreement. PJM must obtain approval of two-thirds of the Members Committee in order to make filings under Section 205.

There is nothing in the FPA that limits PJM from making an FPA Section 206 filing over any matter within their purview. PJM has the right to make filings under Section 206 of the Federal Power Act without stakeholder approval.

Section 7.7(vi) of the Operating Agreement provides:

> In accordance with this Agreement, the PJM Board shall supervise and oversee all matters pertaining to the PJM Region and the LLC, and carry out such other duties as are herein specified, including but not limited to the following duties and responsibilities: … Petition FERC to modify any provision of this Agreement or any Schedule or practice hereunder that the PJM Board believes to be unjust, unreasonable, or unduly discriminatory under section 206 of the Federal Power Act, subject to the right of any Member or the Members to intervene in any resulting proceedings...

Stakeholders cannot prevent a Section 206 filing by PJM, with the support of the PJM Board, proposing to change any of its market rules. PJM has successfully exercised this authority in the past, including the filing to reform the PJM capacity market rules.[6]

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6 *See, e.g.*, Docket No. EL05-148-000 (RPM Filing).

Unlike filings under Section 205, under FPA Section 206 PJM must also show that the existing rules are unjust and unreasonable before its proposed remedy will be considered. PJM cannot expect the same deference to its proposals that PJM could expect for proposals filed under Section 205. Once the Commission has determined that the existing rules are unjust and unreasonable, the Commission has the responsibility to determine the appropriate, just and reasonable remedy.[7] The Commission could require that PJM implement PJM's proposal, an alternative proposal, the Commission's own solution or some combination of the foregoing. With FPA Section 206 filings, the Commission is unhampered by limitations applicable to its ability to reject undesirable elements of Section 205 proposals.[8]

Unlike filings under FPA Section 205, Section 206 filings there is no limitation on the ability of the Commission to choose a solution that best promotes efficient and competitive markets and best promotes and protects the public interest. Unlike filings under FPA Section 205, under Section 206 filings the Commission can proceed to direct implementation of an optimal remedy without delay. Filings submitted under Section 206 afford the Commission the maximum opportunity to advance its policy goals and to fairly balance competing stakeholders' interests.

An important limit on PJM's use of Section 206 is the requirement that PJM prove that the current rules are unjust and unreasonable. This limitation is appropriate for situations where the proposal is controversial and cannot obtain supermajority stakeholder support. Controversial rule changes that meet the Section 206 requirements are precisely where the Commissions' ability to ensure implementation of the best, pro competitive and public interest solution is needed. Section 205 filings, and the deference they are typically

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7 *See* 16 U.S.C. § 824e(a) ("… the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order").

8 *See* NRG Power Mktg., LLC v. FERC, 862 F.3d 108 (2017) (FERC must approve or reject a proposal in light of its purpose and objectives in a Section 205 filing).

afforded, is only appropriate in situations where there is broad support and PJM can obtain support of two thirds of PJM stakeholders.

The question does not address PJM's unilateral rights to change the PJM Manuals without any Commission oversight or approval.[9] Given the significance of the rules included in the Manuals, PJM should be required to submit any substantive changes to PJM Manuals to the Commission for comment, review and approval or rejection.

13. Should PJM have Section 205 filing rights over Regional Transmission Expansion Planning (RTEP) unencumbered by the requirement to obtain approval of two-thirds of the Members Committee?

Comments: No. Approval of the Members Committee is not an encumbrance. Approval by the Members Committee is an essential part of PJM governance.

14. Should the Organization of PJM States Inc (OPSI) have "jump ball" rights over resource adequacy and transmission cost allocation filings when a supermajority of OPSI agrees on an alternative proposal?

Comments: Yes/No. If PJM is granted FPA Section 205 rights over all parts of the OA and OATT, states should have corresponding jump ball rights, with the state decision process remaining the sole purview of each state. If PJM is not granted unilateral FPA Section 205 rights over the OA and OATT, there is no reason for jump ball filings. As anyone who has observed Victor Wembanyama in a jump ball situation knows, the outcome of a jump ball depends primarily on relative heights. The value of jump ball filings is overrated.

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9 See for example the case of change reserve requirements which are fundamental to PJM markets. PJM unilaterally changed the rules in the manuals and noted that PJM did not require approval or even consideration by the members. Starting in May 2023, to compensate for poor unit specific resource performance, PJM unilaterally increased the synchronized reserve reliability requirement, which in turn increased the primary reserve reliability requirement. See Monitoring Analytics, LLC, *2025 Annual State of the Market Report for PJM,* Volume 2, Section 10: Ancillary Service Markets. (March 12, 2026).

15. Should the Members Committee have "jump ball" filing rights over the portions of the tariff where PJM has Section 205 filing rights when a supermajority of stakeholders approves an alternative proposal?

Comments: Yes/No. If PJM is granted FPA Section 205 rights over all parts of the OA and OATT, the Members Committee should have corresponding jump ball rights based on a two thirds vote. If PJM is not granted unilateral FPA Section 205 rights over the OA and OATT, there is no reason for jump ball filings. PJM should not have Section 205 rights over any part of the OA or the OATT.

16. Should the approval threshold in the Members Committee be lowered from two-thirds sector-weighted voting?

Comments: No. The existing voting threshold requires significant agreement among diverse PJM sectors. This is an appropriate threshold for an FPA Section 205 filing with its lower standard for Commission review.

17. Should the voting rules barring affiliate votes, which apply to senior standing committees, also apply to lower-level committees?

Comments: Yes. There is absolutely no reason to perpetuate the ability of members with multiple affiliates to have a disproportionate influence over which options are brought to the senior committees for a vote. There is good reason to have the same voting rules at all committee levels to ensure a uniform approach across committees and to prevent undue influence by those with multiple affiliates.

18. In addition to OPSI, should there be a second state representative group consisting of governors' representatives and/or state legislators' representatives?

Comments: The structure of state representation is a matter for the states to decide.

19. Should state representatives have a formal voting role in the stakeholder process (limited to certain topics, such as resource adequacy and regional transmission cost allocation) in addition to the consumer advocate votes?

Comments: The role of the states is a matter for the states to decide. However, if the states decide that they want a formal voting role, there is no reason to limit that role to resource adequacy and regional transmission cost allocation. The states have interest in all PJM rules because all PJM rules have an impact on the costs and risks borne by the 67 million residents in the PJM area. Every decision of PJM whether it is about the energy and ancillary market details or about transmission investment decisions or about the capacity market affects the PJM customers who elect state officials and who ultimately pay the cost of wholesale power determined by PJM rules.

20. Should PJM be required to consult with OPSI prior to making a Section 205 filing related to resource adequacy and transmission cost allocation?

Comments: Yes/No. If PJM is granted broad rights to make FPA Section 205 filings then PJM should be required to consult with the states prior to making any Section 205 filing. If PJM is required to achieve a two thirds majority of the Members Committee in order to make a Section 205 filing, PJM should be expected to have consulted with the states as part of the process. More broadly, PJM should be required to consult with states on all matters where PJM is making public policy decisions that affect the public interest. The relevant structure of the states' representation is a matter for the states to decide.

The basis for assuming that the states are interested only in resource adequacy and transmission cost allocation is unclear and unsupported. The states have interest in all PJM rules because all PJM rules have an impact on the costs and risks borne by the 67 million residents in the PJM area. Every decision of PJM whether it is about the energy and ancillary market details or about transmission investment decisions or about the capacity market affects the PJM customers who elect state officials and who ultimately pay the cost of wholesale power determined by PJM rules.

II. CONCLUSION

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

Respectfully submitted,

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