

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

Midcontinent Independent System Operator, Inc.)	Docket Nos. ER17-1061-001
)	
)	
PJM Interconnection, L.L.C.)	ER17-2291-001
)	(not consolidated)

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF
AMERICAN MUNICIPAL POWER, INC.**

On December 29, 2017, the Commission issued its order¹ conditionally accepting the August 1, 2017 filings made by PJM Interconnection, L.L.C. (“PJM”) and Midcontinent Independent System Operator, Inc. (“MISO”) (collectively, the “RTOs”), as amended on October 30, 2017, in Docket Nos. ER17-2218-001 and ER17-2220-001 (“JOA Filings”).² The Commission determined³ that a concern American Municipal Power, Inc. (“AMP”) raised with respect to the pseudo-tie suspension and termination provisions contained in the JOA Filings would be appropriately addressed in Docket No. ER17-1061, which pertains to MISO’s filing of its *pro forma* pseudo-tie agreement and related tariff amendments pursuant to section 205 of the Federal Power Act (“FPA”).⁴ Additionally, on January 11, 2017, PJM Interconnection, L.L.C. (“PJM”) submitted a motion for leave to answer and answer (“January 11 Answer”) in Docket No. ER17-2291-001, which pertains to PJM’s section 205 filing of, *inter alia*, its *pro forma* pseudo-tie agreement and related tariff amendments. PJM filed its January 11 Answer in

¹ *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,313 (2017) (“December 29 Order”).

² The JOA Filings contain revisions to the Joint Operating Agreement Between the Midcontinent Independent System Operator, Inc. and PJM Interconnection, L.L.C. (“JOA”).

³ December 29 Order at P 57 (“we note that the MISO pro forma pseudo-tie agreement is pending in the proceeding in Docket No. ER17-1061-000, *et al.*, and issues related to the substance of that *pro forma* pseudo-tie agreement will be appropriately addressed in that proceeding.”).

⁴ 16 U.S.C. § 824d.

response to a protest filed by AMP on December 28, 2017. PJM's January 11 Answer discusses the pseudo-tie suspension and termination provisions contained in PJM's *pro forma* pseudo-tie agreement and in the JOA Filings.⁵ Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure,⁶ AMP hereby submits this Motion for Leave to Answer and Answer ("Answer") that responds to PJM's January 11 Answer and addresses AMP's concerns with the conflict between the suspension and termination provisions contained in MISO's *pro forma* pseudo-tie agreement and the related provisions contained in the PJM *pro forma* pseudo-tie agreement and the JOA Filings.

I. BACKGROUND

MISO's February 28, 2017 filing ("February 28 Filing") in Docket No. ER17-1061-000 contained MISO's proposed revisions to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff ("MISO Tariff"), including a new *pro forma* pseudo-tie agreement in Attachment FFF and related modifications to Modules A and C.⁷ The Commission's letter dated April 28, 2017 notified MISO that its February 23 Filing was deficient, requested additional information from MISO in order to process the filing, and stated that MISO's response would constitute an amendment to that filing. MISO filed its response to the deficiency letter on June 12, 2017. AMP filed its related protest on July 3, 2017, and MISO filed an answer to AMP's protest on July 18, 2017.⁸ On August 9, 2017, Commission staff

⁵ PJM, January 11 Answer at 4-5.

⁶ 18 C.F.R. §§ 385.212 & 385.213.

⁷ MISO, February 23 Filing at 1.

⁸ AMP filed an additional protest on August 22, 2017 ("August 22 Protest") in accordance with the comment deadline the Commission established in relation to the RTOs' JOA Filings in Docket Nos. ER17-2218-000 and ER17-2220. AMP filed its August 22 Protest in Docket No. ER17-1061-000 because PJM argued that the RTOs' JOA Filings "address concerns raised by PJM in its protest to MISO's *pro forma* pseudo-tie agreement." PJM, Filing, Docket No. ER17-2218-000, at 4 (Aug. 1, 2017). Additionally, MISO indicated that it was concurrently submitting its JOA Filing in both Docket Nos. ER17-2220-000 and ER17-1061-000. MISO, Filing, Docket No. ER17-2220-000, at 3 (Aug. 1, 2017).

issued an order accepting and suspending the February 28 Filing, as amended, subject to refund and further Commission order, and granted an effective date of March 15, 2017.⁹ One party requested rehearing of this delegated order. Therefore, MISO's February 28 Filing is in effect, subject to a final order of the Commission and an order addressing rehearing of the delegated order.

PJM's August 11, 2017 filing ("August 11 Filing") in Docket No. ER17-2291-000 contained PJM's proposed revisions to the PJM Open Access Transmission Tariff ("PJM Tariff"), Attachment K-Appendix, section 1.12 and the identical provisions of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement"), Schedule 1, section 1.12 regarding Dynamic Transfers of generators into and out of the PJM Balancing Authority Area.¹⁰ Additionally, as relevant here, PJM's August 11 Filing included a pair of new *pro forma* pseudo-tie agreements.¹¹ The Commission's letter dated November 7, 2017 notified PJM that its August 11 Filing was deficient, requested additional information from PJM in order to process the filing, and stated that PJM's response would constitute an amendment to that filing.¹² PJM filed its response to the deficiency letter on December 7, 2017, and AMP filed its related protest on December 28, 2017 ("December 28 Protest"). PJM subsequently filed its January 11 Answer.

⁹ *Midcontinent Indep. System Op., Inc.*, 160 FERC ¶ 62,135, at p. 3 (delegated letter order) (citing authority delegated to staff by *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017)).

¹⁰ PJM, August 11 Filing at 1.

¹¹ *Id.* at 1-2.

¹² Deficiency Letter at 3.

II. MOTION FOR LEAVE TO ANSWER

AMP respectfully requests waiver of the prohibition contained in Rule 213(a)(2)¹³ in order to answer PJM's January 11 Answer in Docket No. ER17-2291-001 and MISO's July 18, 2017 answer in Docket No. ER17-1061-001. Accepting AMP's Answer will aid the Commission's decision-making process in addressing the interrelated pseudo-tie issues arising in Docket Nos. ER17-2291-001 and ER17-1061-001.¹⁴ In the event the Commission accepts PJM's January 11 Answer, notwithstanding the prohibition on answers to protests contained in the Rules, accepting AMP's Answer in Docket No. ER17-2291-001 would be reasonable because it would allow AMP an opportunity to respond to PJM's otherwise unauthorized pleading.

In the December 29 Order, the Commission determined that "the terms, conditions, and obligations for pseudo-tied resources and loads, including their suspension and termination, are appropriately addressed in each RTO's tariff."¹⁵ Further, the Commission accepted the pseudo-tie suspension and coordination provisions included in the JOA filings, and the Commission determined that these "govern the RTOs' coordination with each other with respect to pseudo-tied resources."¹⁶ Finally, the Commission directed AMP's concerns with the discrepancy between MISO's *pro forma* agreement and the PJM *pro forma* agreement and JOA Filings to Docket No. ER17-1061-001. Accordingly, good cause exists to accept AMP's Answer in Docket No. ER17-1061-001.

¹³ 18 C.F.R. § 385.213(a)(2).

¹⁴ See, e.g., *PJM Interconnection, L.L.C.*, 145 FERC ¶ 61,035, at P 32 (2013); *Wisconsin Pub. Serv. Corp.*, 144 FERC ¶ 61,093, at P 27 (2013); *Iberdrola Renewables, Inc.*, 137 FERC ¶ 61,185, at P 17 (2011); and *Virginia Elec. and Power Co.*, 125 FERC ¶ 61,391, at P 26 (2008).

¹⁵ December 29 Order at P 54.

¹⁶ *Id.*

III. ANSWER

A. **The Suspension and Termination Provisions in MISO’s *Pro Forma* Pseudo-Tie Agreement Conflict with the Suspension and Termination Provisions Contained in the PJM *Pro Forma* Pseudo-Tie Agreement and the JOA.**

The Commission’s deficiency letter issued to MISO in Docket No. ER17-2220-001 on September 28, 2017 questioned “whether . . . the grounds for suspension of a pseudo-tie in proposed JOA section 11.3.7 differ from the grounds for suspension listed in section 2(o) of MISO’s pro forma pseudo-tie agreement”¹⁷ In response, MISO noted that its *pro forma* agreement provides for *termination* “upon receipt of six (6) months written notification, or on a date mutually agreed upon by the Parties”¹⁸ MISO initially declared that this provision would only apply to “market participants that wish to facilitate the delivery of generator output or the transfer of load into the MISO Energy and Operating Reserve Markets, not for pseudo-ties out of the MISO Balancing Authority Area into another market, *e.g.* PJM’s.”¹⁹ Then MISO concluded that “PJM’s 42-month notification requirement falls under the ‘date mutually agreed upon by the Parties’ clause within the termination provision [of the MISO *pro forma* agreement].”²⁰

The recently-approved JOA provisions that govern the relationship between PJM and MISO require each RTO to give the other RTO (in their respective roles as Balancing Authorities) “at least forty-two months written notice prior to the commencement of a PJM Delivery Year, for any reason, subject to receiving all necessary regulatory approvals for such termination” when “seeking to terminate the pseudo-tie of a PJM Generation Capacity

¹⁷ MISO Deficiency Letter at 2.

¹⁸ MISO, Deficiency Response, Docket No. ER17-2220-001, at 7 (Oct. 30, 2017). *See* MISO Tariff, Attachment FFF, section 10.

¹⁹ *Id.*

²⁰ *Id.*

Resource,” although certain exceptions apply.²¹ Thus, these JOA termination provisions are consistent with the PJM *pro forma* agreement, but not the express terms of the MISO agreement. MISO takes the position that the provision in its *pro forma* agreement allowing MISO to terminate a pseudo-tie on six-months notice does not apply to MISO resources pseudo-tied into PJM because the forty-two month notice provisions in the PJM agreement and the JOA reflect a mutually agreed limitation on MISO’s termination rights. However, MISO will not be a party to PJM pseudo-tie agreements²² and the owner of a pseudo-tied resource is not a party to the JOA. As a result, MISO’s interpretation appears to rely on a daisy-chain of bi-lateral agreements. At a minimum, the Commission should memorialize MISO’s complicated interpretation in the Commission’s order. A better approach would be for MISO to revise the termination language in its *pro forma* agreement to conform to its own interpretation, by adding the underscored language as follows:

In addition to all other termination rights provided under this Agreement, service under this Agreement must terminate upon receipt of six (6) months written notification, or on a date mutually agreed upon by the Parties, in accordance with the modeling update guidelines; provided, in no event shall MISO terminate the pseudo-tie of a PJM Generation Capacity Resource, except upon giving the entity that pseudo-tied the unit at least forty-two (42) months written notice.

B. PJM has Failed to Address Legitimate Questions Regarding the Vagueness of its Pseudo-Tie Suspension Provisions and the Effect of Suspension on Pseudo-Tied Resources.

AMP, in its December 28 Protest, observed that PJM’s response to the Commission’s November 7, 2017 deficiency letter in Docket No. ER17-2291-001 raised issues concerning PJM’s apparent attempt to use the terms and conditions of its *pro forma* pseudo-tie agreement to unnecessarily restrict access to PJM and MISO markets. While PJM has confirmed that

²¹ JOA section 11.3.9.

²² See PJM, Filing, Docket No. ER17-2291-000, at 18-19 (Aug. 11, 2017).

parameters governing the ability of these resources to participate in their native Balancing Authority's markets are found in PJM's Tariff and Operating Agreement,²³ PJM nevertheless stated that, under the pseudo-tie agreement, "[s]uspension of external generators will always involve curtailment of the generator by restricting the generator from participation in day-ahead and real-time market activities."²⁴ AMP demonstrated that PJM's interpretation of the effect of the suspension provisions in its *pro forma* pseudo-tie agreement was unnecessary, overbroad and inconsistent with the principle that market access conditions should be expressly included in the relevant provisions of the tariff. These provisions should not be derived by implication from PJM's vague pseudo-tie suspension provisions in its *pro forma* agreements.

AMP noted that pseudo-tie arrangements under the PJM *pro forma* agreements are available to MISO generators that participate in both PJM's energy and capacity markets, and are also available to MISO generators that participate only in PJM's energy markets. AMP argued that, in the latter case, there was no basis to restrict the suspended energy-only resource from participating in the native MISO market during the term of the suspension because that resource would not face a must-offer requirement in the PJM energy market. PJM has failed to provide any rational basis for implying such a restriction from the vague pseudo-tie suspension provisions in its *pro forma* agreements.

Rather than squarely addressing the issues generated by its vague provisions and its overbroad Deficiency Response, PJM's January 11 Answer dodges them by attempting to deflect the discussion onto an irrelevant tangent. Specifically, PJM argues that the suspended pseudo-tied energy-only resource never should have sought a pseudo-tie to begin with because that

²³ See AMP, December 28 Protest at 3 (citing PJM, Deficiency Response, Docket No. ER17-2291-001, at 15 (Dec. 7, 2017) ("Deficiency Response")).

²⁴ PJM, Deficiency Response at 12.

resource may have been eligible to arrange a Dynamic Schedule instead. However, there are many reasons why PJM's hypothetical alternative does not make sense. The resource may, for example, have pseudo-tied and offered but not cleared in a PJM capacity auction, leaving the resource with no capacity obligation or concomitant must-offer obligation in PJM's energy market. In any case, the Commission should not be distracted by this ploy and should require elimination of the vagueness inherent in PJM's *pro forma* agreements, as demonstrated by PJM's Deficiency Response and its evasive January 11 Answer.

C. PJM Erroneously Relies on the Commission's Determination in the December 29 Order in Support of the Vague Suspension and Termination Provisions in its *Pro Forma* Pseudo-Tie Agreement.

PJM's January 11 Answer errs in citing the Commission's December 29 Order on the RTOs' JOA Filings in support of the vague suspension and termination provisions in its *pro forma* pseudo-tie agreements.²⁵ PJM correctly acknowledged the Commission's position that the RTOs are responsible for taking corrective action in the event that a pseudo-tied resource was "causing or contributing to a system reliability problem," and that this is a reasonable basis for the RTOs to include such events as a "ground for suspension in the JOA."²⁶ However, PJM unreasonably stretches this finding when PJM concludes that it is a basis for finding that the suspension and termination provisions in its *pro forma* agreements are just and reasonable.

PJM argues that "PJM should not have to describe every specific potential scenario in which it would be necessary to suspend or terminate a Pseudo-Tie in its agreements."²⁷ No party has requested that, but neither should PJM be allowed to invoke unspecified reliability criteria as grounds for suspension or termination of a pseudo-tie. The Commission's determination in

²⁵ See PJM, January 11 Answer at 4-5.

²⁶ *Id.* at 5 (quoting December 29 Order at P 55).

²⁷ PJM, January 11 Answer at 4.

the December 29 Order addressed the RTOs' coordination with one another. The December 29 Order did not address the terms and conditions of service provided to the pseudo-tied entity. The Commission's acceptance of loosely defined principles in connection with coordination agreements between the RTOs does not suggest that the Commission should accept such ambiguity in the *pro forma* agreements manifesting the terms and conditions of service provided to the pseudo-tied entity, especially given that pseudo-tied resource owners are transmission-dependent entities who would likely suffer significant financial harm from suspension or termination.

As AMP argued in its December 28 Protest, the "rule of reason" requires that the filed tariff recite "those practices that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous."²⁸ PJM's suspension and termination provisions significantly affect service by denying that service but lack definitive criteria identifying when suspension and termination can be invoked, even though PJM has provided descriptions of such criteria outside of the filed agreements. Accordingly, PJM's statement that "it intends to provide further detail in the PJM Manuals as needed"²⁹ is contrary to well established Commission policy requiring inclusion of such information in the posted tariff.

²⁸ *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985).

²⁹ PJM, January 11 Answer at 4.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, AMP respectfully requests that the Commission: (1) direct the RTOs to modify their filings in accordance with AMP's December 28 Protest and the foregoing Answer; (2) alternatively, reject the filings; and (3) grant such further relief as the Commission may deem appropriate.

Respectfully submitted,

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Dated: January 26, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused a copy of the foregoing document to be served on each person included on the official service list maintained for this proceeding by the Commission's Secretary, by electronic mail or such other means as a party may have requested, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Washington, D.C., this 26th day of January, 2018.

By: /s/ Anna Williamson
Anna Williamson