

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

PPL Electric Utilities Corporation, <i>et al.</i> )	Docket Nos. ER17-179-001
Monongahela Power Company, <i>et al.</i> )	EL16-71-002
)	(not consolidated)

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF  
AMERICAN MUNICIPAL POWER, INC., OLD DOMINION ELECTRIC  
COOPERATIVE, THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE, THE  
PJM INDUSTRIAL CUSTOMER COALITION, ILLINOIS CITIZENS UTILITY BOARD,  
OFFICE OF THE PEOPLE’S COUNSEL FOR THE DISTRICT OF COLUMBIA,  
PUBLIC POWER ASSOCIATION OF NEW JERSEY AND CONSUMER ADVOCATE  
DIVISION OF WEST VIRGINIA**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,<sup>1</sup> American Municipal Power, Inc. (“AMP”), Old Dominion Electric Cooperative (“ODEC”), the Delaware Division of the Public Advocate (“DE DPA”), the PJM Industrial Customer Coalition (“PJMICC”), the Illinois Citizens Utility Board, the Office of the People’s Counsel for the District of Columbia (“DC-OPC”), the Public Power Association of New Jersey (“PPANJ”), and the Consumer Advocate Division of West Virginia (collectively, “Load Group”) hereby submit this Motion for Leave to Answer and Answer to the Answers filed by PJM Interconnection, L.L.C. (“PJM”) and the PJM Transmission Owners (“PJM TOs”), respectively, on April 18, 2018 (“Answer”) to the compliance filings made by PJM and the PJM TOs in the above referenced proceedings. In their respective Answers, PJM and the PJM TOs argue that

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.213.

the Commission should accept the compliance filings without hearing, modification or condition.<sup>2</sup>

## **I. MOTION FOR LEAVE TO ANSWER**

The Load Group acknowledges that the Commission's Rules do not permit answers to answers as a matter of right.<sup>5</sup> As the PJM TOs note, the Commission has found good cause to permit answers under Rule 213 where it is persuaded that the answer will clarify issues, help develop a complete and accurate record, and not unduly delay the proceeding or place additional burdens on parties to the proceeding.<sup>3</sup> The Load Group seeks waiver of the prohibition of Rule 213(a)(2) in order to file this answer. Accepting this answer will aid the Commission's decision-making process by responding to and correcting misstatements of fact and applicable law in PJM's and the PJM TOs' respective Answers and will not unduly delay the proceeding or place additional burdens on the parties.<sup>4</sup> Accordingly, the Commission should accept the Load Group's answer.

## **II. BACKGROUND**

On February 15, 2018, the Commission issued an Order Accepting in Part Proposed Tariff Revisions and Requiring Tariff Revisions Pursuant to Federal Power Act ("FPA") Section 206 ("Order") in this proceeding.<sup>5</sup> The Order found that the PJM TOs are implementing PJM's Amended and Restated Operating Agreement ("Operating

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<sup>2</sup> PJM TOs' Answer at 2.

<sup>3</sup> *Id.* at 5.

<sup>4</sup> 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).

<sup>5</sup> *Monongahela Power Co.*, 162 FERC ¶ 61,129 (2018).

Agreement”) in a manner that is inconsistent with the requirements of Order No. 890<sup>6</sup> and, therefore, that the Operating Agreement and the PJM Open Access Transmission Tariff (“Tariff”) are not just and reasonable and are unduly discriminatory and preferential.<sup>7</sup> Further, the Order concluded that the PJM TOs have not fully met their burden under FPA Section 205<sup>8</sup> to demonstrate that the modifications they proposed jointly with PJM in their Attachment M-3 Filing<sup>9</sup> are just and reasonable and not unduly discriminatory or preferential.<sup>10</sup> Therefore, the Commission accepted in part the PJM TOs’ Attachment M-3 Filing and, pursuant to the Commission’s authority under FPA Section 206,<sup>11</sup> required revisions to both the Operating Agreement and Attachment M-3 to the Tariff.<sup>12</sup> The PJM TOs submitted a compliance filing to incorporate the specific changes to Attachment M-3 of the Tariff requested by the Commission on March 19, 2018. Concurrently, PJM submitted a compliance filing to “include the specific changes directed by the Commission” to the Operating Agreement.

The Load Group submitted a Protest of both PJM’s and the PJM TOs’ compliance filings on April 9, 2018, raising a number of substantive concerns with the compliance

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<sup>6</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>7</sup> Order at P 4.

<sup>8</sup> 16 U.S.C. § 824d.

<sup>9</sup> PJM TOs and PJM, Filing, Docket No. ER17-179-000 (Oct. 25, 2016).

<sup>10</sup> Order at P 4.

<sup>11</sup> 16 U.S.C. § 824e.

<sup>12</sup> Order at P 4.

filings.<sup>13</sup> PJM and the PJM TOs filed their respective Answers on April 24, 2018. The Load Group submits these limited responses for the Commission's consideration.

### **III. ANSWER**

#### **A. RTEP Timing and Coordination**

The Load Group and ODEC protested the minimum periods between meetings and for stakeholder feedback proposed by the PJM TOs. Load Group Protest at 8-9, ODEC Protest at 6. The crux of the PJM TOs' response to requests to provide additional time for stakeholder review and feedback on proposed projects is that the minimum time periods the PJM TOs proposed are the only ones capable of ensuring that all required steps are completed "in conjunction with PJM's development of the Regional Transmission Expansion Plan ("RTEP")." PJM TOs' Answer at 6. However, the PJM TOs immediately contradict themselves regarding how the Supplemental Project Planning Process works in reality: "Nothing in Order No. 890, the Show Cause Order, or the February 15 Order establishes limits on how frequently a PJM Transmission Owner can present Supplemental Projects for stakeholder input and for integration into the RTEP.... System needs can arise throughout the year and consistent with good utility practice, the PJM Transmission Owners need the flexibility to address these needs whenever they arise and in a timely manner." PJM TOs' Answer at 16. In other words, the PJM TOs argue that even a few additional days could "rob the PJM Transmission Owners and PJM of the flexibility to schedule the required meetings on the monthly basis required to

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<sup>13</sup> AMP and the PJMICC, as well as ODEC also submitted requests for rehearing of the Commission's Order on March 19, 2018. To the extent rehearing of the February 15 Order is granted and the Commission's rulings on rehearing impact the matters addressed in the PJM TOs' and PJM's compliance filings, the Load Group reserves the right to further comment on these issues.

complete the process” in a manner that “supports PJM’s RTEP planning cycle,” but the PJM TOs should have the opportunity to introduce new Supplemental Projects any time over the course of the year. It is this fundamentally unbalanced playing field wherein the PJM TOs are permitted to manage the Local Planning process however they see fit that has engendered such broad and deep stakeholder opposition.

Today, Supplemental Projects are introduced at any and every point in time without regard to any other budgeting or planning processes. The PJM TOs claim that there is coordination between the Local Planning Process and the PJM RTEP, but they do not and cannot provide any reference to or evidence of such coordination – *because such coordination does not happen.*

In spite of assurances otherwise,<sup>14</sup> the transmission planning process for Supplemental Projects is disaggregated from PJM’s RTEP process. PJM states that “through its established regional transmission planning process that fully merges local and regional planning, PJM *evaluates both local and regional planning criteria.*”<sup>15</sup> As the Commission has noted, PJM explains that the PJM TOs “bring their current local planning information, including all criteria, assumptions, and models used, to the SR RTEP Committees, where it is reviewed by the Subregional RTEP Committees to develop and finalize Local Plans that are coordinated with the PJM regional transmission planning

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<sup>14</sup> PJM’s manual describes the process as follows: Supplemental Projects “will be introduced to the PJM Regional planning process through PJM’s TEAC and Subregional RTEP Committees. In this way these TO initiated projects will be subject to the same open, transparent and participatory PJM committee activities as PJM initiated projects (see discussion of TEAC and Subregional RTEP Committee.)” See, PJM Manual 14B at 18 (available at: <http://www.pjm.com/-/media/documents/manuals/m14b.ashx>).

<sup>15</sup> PJM July 22, 2013 Second Round Order No. 1000 Regional Compliance Filing Docket No. ER13-198-002, at 17 (emphasis in original).

process.”<sup>16</sup> What happens in practice is far from a fully integrated process and there is little to no evaluation of the TOs’ proposed Supplemental Projects and Local Plan.

PJM’s evaluation of Supplemental Projects is limited to performing a network simulation for those Supplemental Projects that have corresponding power flow modeling to ensure that the proposed project will not create any adverse reliability impacts on the balance of the transmission system (the “do no harm” evaluation).<sup>17</sup> The PJM SRRTEP process has no provision to validate either a TO’s need for Supplemental Projects or the prudence of the project. As such, PJM has stated that it does not believe there is any basis for additional SRRTEP committee review of a Supplemental Project absent an identified “harm” to the bulk electric system (“BES”).

PJM’s practice has been for TOs to present a Supplemental Project as a first read at a SRRTEP committee meeting facilitated by PJM and take stakeholder questions. The proposed Supplemental Project is presented again at a second read where the TO responds to questions on the proposed project -- to the extent there is time in the meeting and to the extent the TO is willing and able to provide responses. There is no further review process associated with the Supplemental Project unless and until the TO seeks to recover the Supplemental Project cost through rate base, at which point a stakeholder may raise a prudence argument through the rate case process.

Moreover, to the extent there *is* any review, there is no consistency in how the Supplemental Projects are presented, or even when they are presented. The TOs

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<sup>16</sup> See, PJM Interconnection, L.L.C. *et al.*, Docket Nos. ER15-1344-001, ER15-1344-002, and ER15-1387-001, Supplemental Notice of Technical Conference at 2 (October 29, 2015) (citing PJM July 14, 2014 Third Round Regional Compliance Filing, Docket No. ER13-198-004 at 4 and PJM Third Round Regional Compliance Order, 150 FERC ¶ 61,038 at P 20).

<sup>17</sup> See, *RTEP Overview* at 61, available at: <http://www.pjm.com/-/media/committees-groups/task-forces/trpstf/20160509/20160509-item-03-rtep-overview.ashx>.

provide varying levels of information, and present them at various stages of development; indeed, some Supplemental Projects are already in service when they are presented to other stakeholders for the first time.

The tables below were assembled from reports posted at the TEAC and SRRTEP meetings for 2017 and 2018 year to date and have been cross-referenced against the information on Supplemental Projects that PJM posts on its website (available at: <http://www.pjm.com/planning/rtep-upgrades-status/construct-status.aspx>). The tables demonstrate that 270 Supplemental Projects with estimated costs of \$3.4 billion were reviewed at various TEAC and SRRTEP committee meetings, compared to the 183 baseline projects with estimated costs of \$3.85 billion approved by the PJM Board for the same period. In the first three months of 2018 alone, the PJM TOs have already presented 130 more Supplemental Projects totaling \$2.06 billion.

2017	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	1	2	3	4	5	6	7	8	9	10	11	12
Number of Projects (Initial Read)	63	0	2	1	68	7	0	6	4	5	1	31
Total Project Cost (in millions)	821.7	0	9.9	0.11	785.7	27.9	0	478.4	39.5	108.4	1.5	397.9

2018	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	1	2	3	4	5	6	7	8	9	10	11	12
Number of Projects (Initial Read)	60	45	25	0	0	0	0	0	0	0	0	0
Total Project Cost (in millions)	1173	654.03	236.41	0	0	0	0	0	0	0	0	0

Of the 270 Supplemental Projects in 2017,<sup>18</sup> when presented at their respective first reads, 181 of the projects were already in a stage of development ranging from engineering to 100% complete. Five projects were already **in service** at their first reads (27 of the proposed projects did not have any designated status).<sup>19</sup> At the second read, 205 out of 270 proposed Supplemental Projects were beyond the conceptual/scoping development phase, with 9 already in service. That is, 76% of Supplemental Projects were presented to stakeholders in the SR RTEP meetings at a stage of development where meaningful input is unfeasible at best.

PJM RTEP Projects (2017)	Project Status At First Read					Total
	Pre-Engineering	Engineering	Under Construction	In-Service	None Provided	
<i>Supplemental</i>	61	146	30	5	27	269
<i>Baseline</i>	62	12	0	0	108	182

PJM RTEP Projects (2017-2018 YTD)	Project Status At First Read					Total
	Pre-Engineering	Engineering	Under Construction	In-Service	None Provided	
<i>Supplemental</i>	\$ 1,477	\$ 1,500	\$ 261	\$ 14	\$ 144	\$ 3,397
<i>Baseline</i>	\$ 1,180	\$ 300	\$ -	\$ -	\$ 2,370	\$ 3,851

PJM RTEP Projects (2017)	Project Status At Second Read					Total
	Pre-Engineering	Engineering	Under Construction	In-Service	None Provided	
<i>Supplemental</i>	41	165	31	9	24	270
<i>Baseline</i>	62	16	0	0	105	183

<sup>18</sup> Any differences between the tables is a result of the difference in timing of when PJM posted the information on its website and AMP's compiling of the information and the fact that PJM may re-categorize projects.

<sup>19</sup> PJM categorizes the projects by percent complete correlated to the following milestones: (1) Engineering and Planning (EP) status: 0% - 25% - includes engineering, detailed design, material procurement, resource planning; (2) Under Construction (UC): 26% - 100%, with 26-90% - construction activities and 91-100% - testing and inspection. See, <http://www.pjm.com/planning/rtep-upgrades-status/construct-status.aspx>.

PJM RTEP Projects (2017- 2018 YTD)	Project Status At Second Read					Total
	Pre-Engineering	Engineering	Under Construction	In- Service	None Provided	
<i>Supplemental</i>	704.45	2334.87	287.75	18.92	57.16	\$ 3,403.15
<i>Baseline</i>	1001.46	705	0	0	2145.7	\$ 3,852.16

The sheer volume of Supplemental Projects being proposed with inconsistent levels of justification is the basis for requesting the Commission to institute a more rigorous process. Yet, the PJM TOs would have the stakeholders who have a real interest in understanding the proposed Supplemental Projects – as load pays for all of the projects - take a backseat to every other PJM stakeholder meeting.<sup>20</sup> PJM and the Transmission Owners mistakenly believe that continuation of the current planning process is adequate. This is clearly not the case.

While the Load Group understands that some Supplemental Projects may arise quickly, not all Supplemental Projects are immediate need. In fact, by definition, Supplemental Projects are not needed for reliability. Thus, the PJM TOs should be able to anticipate, forecast, budget for and plan Supplemental Projects far enough in advance to meet an annual planning process that has established deadlines for including the projects in the Local Plan. But, the PJM TOs object to a Local Planning Process coordinated with the PJM RTEP: “Nothing in Order No. 890, the Show Cause Order, or the February 15 Order establishes a limit on how frequently a PJM Transmission Owner can present Supplemental Projects for stakeholder input and for integration into the

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<sup>20</sup> This is evident from statements like: “While ODEC’s proposed extension of the minimum intervals between meetings from 25 to 30 days might seem modest, such an extension would, in practice, be unworkable in light of the numerous other stakeholder and committee meetings on PJM’s calendar.” PJM TOs’ Answer at 8-9.

RTEP.” PJM TOs’ Answer at 16. The Load Group respectfully submits that Order No. 890 requires a more controlled planning process than the PJM TOs envision.

## **B. Dispute Resolution**

PJM and the PJM TOs oppose the Load Group’s request to clarify that the dispute resolution provisions of the Operating Agreement in Schedule 5 that they have elected to utilize as their Order 890-compliant process apply to both substantive and procedural disputes. PJM TOs’ Answer at 17. Although the PJM TOs claim that they recognize that Order No. 890’s dispute resolution principle requires transmission providers to develop a process for managing both substantive and procedural disputes that arise from the transmission planning process and that Schedule 5 of the Operating Agreement so applies, the PJM TOs assert that ADR on a substantive Local Planning issue amounts to the Load Group attempting to “insert themselves as co-equal participants in the Supplemental Project planning process.” PJM TOs’ Answer at 18. Besides the fact that this is not the Load Group’s intent, a dispute resolution process that addresses both substance and process does not amount to a requirement that the PJM TOs “allow customers to collaboratively develop transmission plans with transmission providers on a co-equal basis.” Order 890 at P 454.

In Order No. 890, the Commission concluded that transmission providers may use an existing dispute resolution process, but that transmission providers “must specifically address how [the existing] procedures will be used to address planning disputes.” Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 501. Without such a clarification, the PJM TOs’ selected dispute resolution process falls short of Order No. 890’s direction that TOs relying on an existing dispute resolution process “must specifically address how its procedures will be used to address planning disputes.” Order 890 at P 501. If the PJM

TOs truly agree that the Operating Agreement Schedule 5 dispute resolution process applies to both substantive and procedural disputes, there is no harm in the Commission issuing such a clarification.

### **C. Rights under the CTOA**

The PJM TOs assert that PJM has only responsibility for developing the RTEP and they “retain responsibility for all other transmission planning activities, including maintaining and replacing their transmission assets and planning their local transmission systems.” PJM TOs’ Answer at 12. The PJM TOs aver that the Consolidated Transmission Owners Agreement (“CTOA”) clearly defines this delineation of responsibilities and that the Commission recognized and accepted this division of responsibilities accepting PJM’s Order No. 890 compliance filings. *Id.* The PJM TOs are mistaken and the Commission should finally clarify this issue.

The CTOA does not make clear that all transmission planning activities other than preparation of the RTEP are retained by the PJM TOs. Specifically, in addition to stating that PJM has responsibility to prepare the RTEP and the PJM TOs must provide information requested by PJM to do so (CTOA at Section 4.1.4), the CTOA provides that rights not specifically transferred by the PJM TOs as part of the CTOA “*or any other agreements*” are reserved to the PJM TOs. CTOA at Section 5.6.<sup>21</sup> The Operating Agreement is another agreement whereby the PJM TOs folded their transmission

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<sup>21</sup> The other provisions of the CTOA cited by the PJM TOs are no more helpful. CTOA Section 4.5 states that the PJM TOs operate and maintain their owned transmission facilities. CTOA Section 5.2 states that the PJM TOs have the right to “to build, finance, own, acquire, sell, dispose, retire, merge or otherwise transfer or convey all or any part of its assets”; however “plan” is not included in the list of rights.

planning processes for local transmission projects into PJM's overall transmission planning process.

As the Commission noted in the February 15, 2018 Order, as part of its filing to meet the Order No. 890 obligations, PJM was directed by the Commission to ensure that the Operating Agreement, that describes the RTEP process and the Local Plan planning process, met the Order No. 890 requirements. PJM stated, and the Commission relied upon such statement, that its "procedures require that the regional and local transmission planning processes be fully integrated into PJM's overall transmission planning process," and that "the Local Plan is a product of the Subregional RTEP Committees rather than of the transmission owners alone." Order at P 8.

While the PJM TOs always have the right to develop individual planning processes that are fully compliant with Order No. 890, that has never happened, even with Attachment M-3.<sup>22</sup> The Commission should clarify that an Order No. 890 compliant transmission planning process for Supplemental Projects does not run afoul of any of the PJM TOs' rights under the CTOA or otherwise.

#### **D. Commission Authority**

The PJM TOs seize on an opportunity to include an answer to the Load Group's argument on rehearing that the Commission exceeded its authority by conditionally accepting Attachment M-3 after improperly transforming a section 205 filing into a section 206 filing through an improper application of *Western Resources*. This tactic is improper and should be rejected. Although the Load Group incorporated by reference into its

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<sup>22</sup> The Load Group is not advocating for the PJM TOs to create their own, individual transmission planning processes as to do so would not be efficient or expedient.

protest of the compliance filings arguments that it made on rehearing, the incorporation was clearly restrained to “substantive issues with the transmission planning process,” and was further constrained to “the *specific errors in this Protest*.”<sup>23</sup> The incorporation was not of the entire rehearing or the legal arguments contained therein. Accordingly, the Commission should reject this argument as an improper answer to the Load Group’s request for rehearing.

But even if the response were proper, it misstates the Load Group’s legal argument. The PJM TOs posit that the Load Group contends that “the Commission may not exercise this authority unless both the existing rate (here, Schedule 6) and the replacement rate (Attachment M-3) are parts of the same rate schedule.” PJM TOs Answer at 13. Not so. The issue is not limited to whether the existing rate and the replacement rate are parts of the same rate schedule. Rather, in order for the Commission to have the authority to transform a section 205 proposal into a section 206 proposal, there must first be a section 205 proposal to modify the offending existing rate. The Commission did not have before it a section 205 proposal from the PJM TOs (or, more properly from the PJM Membership) to modify the Operating Agreement. Instead, the PJM TOs asserted that no changes to the Operating Agreement were required because it was just and reasonable as-is. Attachment M-3 also was not a proposal to reform an existing tariff (or “default position”).<sup>24</sup> Without a section 205 proposal to modify the Operating Agreement, the Commission exceeded its authority under FPA section 205.

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<sup>23</sup> Protest of Compliance Filings by American Municipal Power, Inc., the Delaware Division of the Public Advocate, the PJM Industrial Customer Coalition, Illinois Citizens Utility Board, Office of the People’s Counsel for the District of Columbia, and Public Power Association of New Jersey at 3 (emphasis added).

<sup>24</sup> PJM TOs, Filing, Docket No. ER17-179-000 (Oct. 25, 2016).

#### IV. CONCLUSION

For the reasons stated herein and in the Protest, the Commission should reject the answers of PJM and the PJM TOs, find that the Compliance Filings are deficient and require the PJM TOs to revise their Compliance Filing as the Commission deems warranted in the circumstances presented.

Respectfully submitted,

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May 9, 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 this 9th day of May, 2018.

By:     /s/ Lisa G. McAlister      
Lisa G. McAlister