

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Appalachian Power Co.,)	Docket No. ER20-841-000
PJM Interconnection, L.L.C.)	

MOTION FOR LEAVE TO ANSWER AND ANSWER OF
THE ORGANIZATION OF PJM STATES

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),¹ the Organization of PJM States, Inc., (“OPSI”)² hereby submits this Motion for Leave to Answer and Answer responding to the Answer of the PJM Transmission Owners (“Transmission Owners”) regarding the January 17, 2020 filing (“January 17 Filing”) to add a new Attachment M-4 to the PJM Open Access Transmission Tariff (“OATT” or “Tariff”) submitted in the above-captioned docket.

¹ 18 C.F.R. §§ 385.212, 213 (2019).

² This answer was approved unanimously by the OPSI Board on March 11, 2020.

I. MOTION FOR LEAVE TO ANSWER

While Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to an answer unless otherwise ordered by the decisional authority,³ the Commission often accepts answers to answers where an answer provides information that assists the Commission in the decision-making process.⁴ For instance, answers are permitted when they help ensure a complete record in the proceeding⁵ and provide a better understanding of the issues raised during the proceeding.⁶

Here, OPSI more fully explains its prior position and clarifies mischaracterizations of its position made by the PJM Transmission Owners in their Answer. This Answer thus clarifies the matter and assists the Commission in its decision-making. To the extent necessary, OPSI requests waiver of the prohibition of an answer in Rule 213(a)(2) in that accepting this Answer will aid the Commission's decision-making process.

II. ANSWER

A. The Transmission Owners Mischaracterize OPSI's Comments and Make No Attempts to Cure the Identified Deficiencies.

In their Answer, the PJM Transmission Owners mischaracterize OPSI's comments and its constructive attempt to offer remedies to the deficiencies in the January 17 Filing and associated

³ 18 C.F.R. § 385.213(a)(2) (2014).

⁴ See, e.g., *Calpine Corp. et al. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 at P 31 (2018); *Sw. Power Pool, Inc.*, 154 FERC ¶ 61,279 at P 13 (2016); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,278 at P 6 (2016); *N.Y. Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,268 at P 17 (2016); see also, e.g., *ISO New England Inc. and New England Power Pool*, 142 FERC ¶ 61,024 at P 32 (2013); *PJM Interconnection, LLC*, 142 FERC ¶ 61,019 at P 23 (2013).

⁵ See, e.g., *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005).

⁶ See, e.g., *Mississippi River Transmission, L.L.C.*, 141 FERC ¶ 61,080, at P 4 (2012).

proposed Attachment M-4.⁷ OPSI filed comments stating that the January 17 Filing is deficient in that it fails to achieve an appropriate balance between “the need to protect highly sensitive information pursuant to CIP-014-2 with the requirements for openness, transparency, and opportunity for stakeholder input typically associated with the transmission planning process.”⁸ Without addressing this deficiency the PJM Transmission Owners’ proposed Attachment M-4 would be unjust and unreasonable. OPSI recommended specific important modifications to proposed Attachment M-4 with the intent to guide resolution of these deficiencies and pave the way for timely Commission action. Unfortunately, in its call to reject this reasonable path forward, the Transmission Owners’ Answer stands to jeopardize the prospect for timely CMP process implementation.

B. The Commission Should not Permit Any Transmission Owner to Judge Whether its State Regulator can Protect Confidential Information.

In its comments, OPSI proposed modifications to Steps 5 and 6 (involving state commission consultations with a Transmission Owner and PJM respectively) to remove the Transmission Owner from the position of judging the state commission’s ability to protect confidential material.

In its Answer, the Transmission Owners asserted that OPSI’s requested modifications to Steps 5 and 6 “would require a Transmission Owner to exchange confidential information *even if it cannot ensure* that such consultations and information will be subject to appropriate

⁷ Motion for Leave to Answer and Answer of the PJM Transmission Owners, at 2, 13, 25–33 (February 24, 2020) (Transmission Owners’ Answer).

⁸ Comments of the Organization of PJM States, Inc., at 3 (February 7, 2020) (OPSI Comments).

confidential safeguards.”⁹ The Transmission Owners’ assertion mischaracterizes OPSI’s comments. OPSI recognizes the need for appropriate confidentiality safeguards regarding CIP-14 information. OPSI wrote the proper standard directly into modified Steps 6 and 7, stating that such consultations “shall be subject to appropriate confidential safeguards.”¹⁰

OPSI objected to the Transmission Owners’ proposal to put the Transmission Owner in the position of judgment regarding the adequacy of a state commission’s confidentiality rules and practices. Such an arrangement is improper, unworkable, and would provide the Transmission Owner sole discretion regarding whether consultations with state commissions take place under Steps 5 and 6. The Transmission Owners’ Answer suggests that, if a Transmission Owner judges that its state commission’s confidentiality rules and practices are inadequate, then the Transmission Owner may proceed on to CIP-14 Mitigation Project, (“CMP”) construction without such consultations. A just and reasonable CMP planning process cannot work that way. If the relevant state commission wishes to have the consultations provided under Steps 5 and 6, confidentiality can be assured. The state commissions’ role in the Attachment M-4 process is integral to the justness and reasonableness of the policy and without these consultations the CMP cannot be found to be just and reasonable, and all CMP costs incurred under such a circumstance must be disallowed.

OPSI recognizes that CIP-014 imposes certain obligations on Transmission Owners with respect to certain highly sensitive information. OPSI respects those obligations. Sensitive information can very well be protected without putting the Transmission Owner in the position of

⁹ Transmission Owners’ Answer, at 31 (emphasis in original).

¹⁰ OPSI Comments, at 10-11.

judging a state commission's confidentiality rules and practices. Furthermore, each relevant state commission is keenly aware of the risk associated with the loss of a significant amount of load in the event of a loss of CIP-014 facilities and would not want to exacerbate, add to, or extend that risk.

OPSI's comments explained that state commissions "are routinely responsible for protecting sensitive and confidential information and applying the necessary safeguards."¹¹ On that basis, OPSI continues to support its proposed modifications to Steps 5 and 6.

C. PJM Must Have the Option to Identify a Potential CMP Solution That Is Not Among the Transmission Owner's Proposed Solutions.

In its comments, OPSI recommended that Step 4A (PJM Review) of the Transmission Owners' proposed Attachment M-4 be modified to enable PJM to "identify an alternative solution not among the Preferred or Potential Solutions as the more efficient or cost effective solution."¹² The Transmission Owners urge the Commission to reject this OPSI recommendation on two grounds: (1) that "PJM Transmission Owners retained the responsibility over the planning process for local projects"¹³; and (2) that the "Attachment M-4 process requires PJM to provide a much greater degree of input than under Attachment M-3."¹⁴

The Transmission Owners wrongly suggest that enabling an option for PJM to identify a potential CMP solution that is not among the Transmission Owner's proposed solutions would

¹¹ OPSI Comments, at 9.

¹² OPSI Comments, at 6

¹³ Transmission Owners' Answer, at 25.

¹⁴ Transmission Owners' Answer, at 25.

constitute giving PJM “final authority over all transmission planning decisions.”¹⁵ The Transmission Owners appear to be particularly concerned that providing PJM with the limited option recommended by OPSI in Step 4A of Attachment M-4 would constitute a PJM planning process regarding “local planning issues,”¹⁶ which the Transmission Owners assert should be the province of the Transmission Owner. The Transmission Owners go on to assert that PJM does not have “the relevant information”¹⁷ and that “it would be ineffective for PJM to offer alternative solutions on its own.”¹⁸ None of these Transmission Owner suggestions, arguments, and assertions withstand scrutiny.

The Transmission Owners state that they should be the party to “develop the preferred and proposed solutions to mitigate a CIP-014 facility.”¹⁹ Indeed, that is what is provided for in Step 3 of Attachment M-4, and nothing in OPSI’s comments alters the Transmission Owners’ role in that regard. Enabling PJM to have the option to identify a potential CMP solution that is not among the Transmission Owner’s proposed solutions would not alter the Transmission Owner’s role in developing the preferred and potential solutions.

Similarly, providing PJM with an option to identify a potential CMP solution that is not among the Transmission Owner’s proposed solutions would not constitute giving PJM final authority over the CMP planning process. Step 4B specifically provides that the *Transmission*

¹⁵ Transmission Owners’ Answer, at 25.

¹⁶ Transmission Owners’ Answer, at 26.

¹⁷ Transmission Owners’ Answer, at 26.

¹⁸ Transmission Owners’ Answer, at 26.

¹⁹ Transmission Owners’ Answer, at 26.

Owner has the ultimate responsibility for selecting the CMP project for which construction will be pursued. Nothing in OPSI's comments would disrupt that structure. Provided that PJM makes the project verifications specified in Step 4B, the Transmission Owner may proceed to the next Step with any CMP project it wishes.

OPSI's purpose in proposing its modifications to Step 4A is clear. It is to ensure that, when the time comes for the state consultations provided for in Steps 5 and 6, PJM's independent and objective assessment of the alternatives will not have been foreclosed. If the Transmission Owner has decided to proceed with a CMP project that PJM has not found to be the most efficient and cost-effective solution, that would be important information for the state commission to consider in its review of the proposed project.

The Transmission Owners suggest that OPSI's recommended modification should be rejected because PJM did not request the option to identify a potential CMP solution that is not among the Transmission Owner's proposed solutions.²⁰ However, this reference to PJM's requests, or lack thereof, serves to distract from understanding what value PJM brings to the process. If Step 4A does not provide such an option to PJM, the proposed Attachment M-4 would be deficient. Providing PJM with the option to identify an alternative solution, as recommended by OPSI, preserves PJM's independence while reaching a proper balance between confidentiality and transparency concerns in this case.

The Transmission Owners suggest that providing PJM with the option to identify a potential CMP solution that is not among a Transmission Owner's proposed solutions would be

²⁰ Transmission Owners' Answer, at 25.

tantamount to interjecting PJM into “local planning issues.”²¹ The Transmission Owners appear to be putting forth, for the first time, the argument that CMP planning is local planning.²² Indeed, the word “local” does not appear anywhere in the Transmission Owners’ January 17 Filing Letter. The Transmission Owners also appear to be implying that, because CMP planning is local planning, PJM would not have the “the relevant information needed”²³ and that it “would be ineffective for PJM to offer alternative solutions on its own.”²⁴ The Transmission Owners’ new-found characterization of planning associated with transmission stations and substations as “local planning” is irrelevant. Regardless of naming or categorization, even the Transmission Owners recognize that PJM’s role in the Attachment M-4 process must be enhanced as compared to PJM’s role in the Attachment M-3 process.²⁵ OPSI’s proposed modification to Step 4A is a vital enhancement of PJM’s role. If PJM were to determine that it was not in a good position to exercise OPSI’s proposed option due to lack of “local” information or otherwise, then PJM would likely not exercise the option. If PJM did exercise the option and put forth an ineffective CMP option, the Transmission Owners possess the “meaningful knowledge”²⁶ of CMP planning factors to explain why PJM’s identified option is ineffective during the state commission consultations provided for in Step 5 of Attachment M-4.

²¹ Transmission Owners’ Answer, at 26.

²² Transmission Owners’ Answer, at 26.

²³ Transmission Owners’ Answer, at 26.

²⁴ Transmission Owners’ Answer, at 26.

²⁵ Transmission Owners’ Answer, at 25.

²⁶ Transmission Owners’ Answer, at 26.

The Transmission Owners suggest that it would be better for PJM to recommend that no CMP be pursued than for PJM to have the option to identify a potential CMP solution that is not among the Transmission Owner's proposed solutions.²⁷ This suggestion runs counter to the Transmission Owners' statement regarding "the urgent need to mitigate the risks associated with the loss of a CIP-014 facility"²⁸ and raises questions as to why the Transmission Owners are so adamant that PJM not have the option to identify a potential CMP solution that is not among the Transmission Owner's proposed solutions.

Finally, the Transmission Owners' observation that the Attachment M-4 process already requires PJM "to provide a much greater degree of input than under Attachment M-3"²⁹ is a correct comparison of the Attachment M-3 and M-4 processes. However, that fact, in and of itself, is not a reason for PJM to be denied the option recommended by OPSI. In its comments, OPSI explained that "[b]ecause of the limited transparency associated with the proposed Attachment M-4 planning process, as compared to the Attachment M-3 planning process, . . . PJM's role in the Attachment M-4 process must be expanded beyond PJM's role in the Attachment M-3 process for Supplemental Projects."³⁰ The modification to Step 4A recommended by OPSI will help establish an appropriate balance between "the need to protect highly sensitive information pursuant to CIP-014-2 with the requirements for openness,

²⁷ Transmission Owners' Answer, at 27.

²⁸ Transmission Owners' Answer, at 3.

²⁹ Transmission Owners' Answer, at 25.

³⁰ OPSI Comments, at 5.

transparency, and opportunity for stakeholder input typically associated with the transmission planning process.”³¹

In short, the Transmission Owners have put forth no reasonable suggestion, assertion, or argument as to why PJM should not have the option to identify a potential CMP solution that is not among the Transmission Owner’s proposed solutions, as recommended in OPSI’s comments; and their request that the Commission reject OPSI’s recommendation harms the credibility of their motives in this case.

D. PJM Must Have the Option to Provide its CMP Assessment Report to the Relevant State Commission Without the Necessity of First Receiving the Transmission Owner’s Agreement or Approval.

In its comments, OPSI proposed modifications to Step 4B that would preserve PJM’s independence and permit PJM to submit its CMP report to the relevant state commission without having to obtain prior agreement from the Transmission Owner.³² The purpose of OPSI’s modification to Step 4B is to ensure that PJM would not be subject to pressure from the Transmission Owner to alter content of the report and that PJM would be responsible for submitting its report to the affected state commission without the need to obtain agreement or approval from the Transmission Owner.

In their Answer, the Transmission Owners make clear that they wish to control content of PJM’s CMP Report (“Transmission Owners should have an opportunity to ensure the accuracy of PJM’s data and assumptions”³³; “Attachment M-4 . . . requires that the Transmission Owner and

³¹ OPSI Comments, at 3.

³² OPSI Comments, at 7.

³³ Transmission Owners’ Answer, at 28.

PJM agree that the report is final.”³⁴) and that they alone intend to retain the right to submit PJM’s report to the relevant state commission (“the Transmission Owner has no choice but to submit the report to the state commission”³⁵). The Transmission Owners characterize their intent to control PJM’s CMP report as a perfunctory administrative element—to make sure that “all required steps are completed” and “all information is accurate.”³⁶ They state that “[t]here is no explicit requirement that the Transmission Owner ‘approve’ the report.”³⁷ The Transmission Owners allege that, without control over PJM’s CMP report, the Transmission Owner would not be able to “meet its burden under CIP-014 to protect [confidential] information.”³⁸ The Transmission Owners note that PJM is permitted to consult with state commissions in Step 6 of the Attachment M-4 process³⁹ with the insinuation that such option justifies the Transmission Owners’ proposal to constrain PJM in Step 4B. They note that Transmission Owners “bear the risk of cost recovery.”⁴⁰ The Transmission Owners state that PJM’s determination “that the PJM Transmission Owner’s preferred solution should be modified or not pursued would be available as evidence in any prudence challenge at FERC,”⁴¹ but if PJM is prohibited by Step 4B from independently identifying an alternative project, there will be no such evidence to adduce. Finally, the Transmission Owners suggest that, because PJM submitted “comments in support of

³⁴ Transmission Owners’ Answer, at 28.

³⁵ Transmission Owners’ Answer, at 28.

³⁶ Transmission Owners’ Answer, at 28.

³⁷ Transmission Owners’ Answer, at 27 (emphasis added).

³⁸ Transmission Owners’ Answer, at 28.

³⁹ Transmission Owners’ Answer, at 28.

⁴⁰ Transmission Owners’ Answer, at 29.

⁴¹ Transmission Owners’ Answer, at 29 (emphasis added).

the proposed Attachment M-4,”⁴² proposed Step 4B must be “both reasonable and appropriate.”⁴³

None of these Transmission Owner declarations rationally justify the Transmission Owners’ proposal to control the content of PJM’s CMP report and the submission of that report to the relevant state commission. As recommended in OPSI’s comments, the Commission must address the deficiency in the Transmission owners’ proposed Step 4B and preserve PJM’s independence by not permitting the Transmission Owners to control content and issuance of PJM’s CMP report.

E. Section (c) of Proposed Attachment M-4 (“Modifications”) Should be Deleted Because it is Redundant and Unnecessary.

In its comments, OPSI recommended that section (c) of Attachment M-4 (“Modifications”) be deleted on the grounds that its inclusion is redundant and unnecessary because it refers to existing and controlling procedure in the Consolidated Transmission Owner Agreement (“CTOA”) and the Federal Power Act (“FPA”).⁴⁴

In their Answer, the Transmission Owners responded by stating that the Modifications section of the proposed Attachment M-4 is “virtually identical to the Modifications section the Commission approved for Attachment M-3.”⁴⁵ The Transmission Owners state that “[l]ike the purpose of the provision in Attachment M-3, the purpose of the proposed Modifications section

⁴² Transmission Owners’ Answer, at 29.

⁴³ Transmission Owners’ Answer, at 29.

⁴⁴ OPSI Comments, at 15.

⁴⁵ Transmission Owners’ Answer, at 13, footnote 25.

in Attachment M-4 is “merely to preserve the PJM Transmission Owners’ FPA section 205 filing rights.”⁴⁶

Notably, the Transmission Owners did not rebut OPSI’s assertion that section (c) of Attachment M-4 is redundant and unnecessary. The Transmission Owners’ only support for including that section in Attachment M-4 is that similar language was included in Attachment M-3. While OPSI might suggest that including that language in Attachment M-3 was also redundant and unnecessary, OPSI continues to recommend here that section (c) be deleted from Attachment M-4 because the issue of Transmission Owners’ FPA section 205 filing rights is covered by Section 8.5 of the Consolidated Transmission Owners Agreement, and is therefore redundant and unnecessary in Attachment M-4.

III. CONCLUSION

For the foregoing reasons, OPSI requests that the Commission accept this Answer and adopt the modifications to the Transmission Owners’ Attachment M-4 recommended in OPSI’s comments.

Respectfully Submitted,

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⁴⁶ Transmission Owners’ Answer, at 13, footnote 25.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am on this date serving a copy of the foregoing document upon each person designated on the official service list compiled by the Federal Energy Regulatory Commission in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Newark, Delaware this 11th day of March, 2020

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Document Content(s)

3.11.20ER20-841 OPSI Answer to PJM, filing copy (1).PDF.....1-14