

February 23, 2024

Via email

PJM Board of Managers
Mr. Mark Takahashi, Chair
Mr. Manu Asthana, President and CEO
PJM Interconnection, L.L.C.
2750 Monroe Boulevard
Audubon, PA 19403

Re: CTOA planning provisions amendments proposed by AEP, AES, Exelon,
and PPL.

Dear PJM Board of Managers:

On February 20, 2024, PJM convened a special open¹ session of the Transmission Owners Agreement-Administrative Committee (TOA-AC) to consider certain [amendments](#) to the Consolidated Transmission Owners Agreement (CTOA), proposed by the PJM Members listed above. The proposed revisions are intended to force (1) removal of provisions addressing PJM's Regional Transmission Expansion Plan (RTEP) from the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement), and (2) inclusion of those provisions in the PJM Open Access Transmission Tariff (Tariff). The [stated](#) purpose of this reshuffle is to "[give] PJM unilateral and exclusive Federal Power Act (FPA) Section 205 rights to file for changes in the PJM Planning Protocol." The undersigned stakeholders, which include PJM Transmission Owners, have serious concerns with this proposal and urge the Board to direct PJM management to oppose these unsupported and unreasonable changes to PJM's governing documents.

The proponents allege that "PJM is too reactive" and therefore "not able to advance important regional transmission planning reforms." But the proponents have not provided any evidence of PJM's failings in this regard. While the industry is undergoing a generation resource transition, the transmission planning process has served PJM well through other fundamental resource mix evolutions without compromising system reliability,² and the proponents do not identify any proposed improvements to the planning process to address the concerns. What the proponents really seek is a scenario where the proponents, and some of their Transmission Owner brethren, can seek revisions to PJM's planning process, nominally run these through the stakeholder process, and

¹ "Open" in that PJM Members, but not states nor the Independent Market Monitor, were permitted to attend but only Transmission Owners and PJM were permitted to speak.

² For example, as a result of environmental regulations, the PJM resource mix underwent a rapid transition from coal to natural gas generation under the current transmission planning process.

prompt PJM to file them for FERC approval, without regard to the will of PJM's Members, as expressed by a vote of the Members Committee. If the CTOA changes are made, the CTOA would be materially inconsistent with the planning provisions and other aspects of PJM's governing documents.

The proponents argue that PJM needs backstop authority to file planning process revisions in the event the stakeholder process does not result in a FERC filing. But PJM already has backstop authority; PJM can always file governing document revisions as a proposed replacement rate under FPA Section 206. PJM bears the burden under Section 206 to demonstrate that the existing rate is unjust, unreasonable, or unduly discriminatory, before the Commission will consider the proposed replacement rate. Under Section 205, PJM generally needs only show that the proposed new rates, terms and conditions are just, reasonable, and not unduly discriminatory or preferential; PJM need not show that its proposal is better than other options. And under Section 205, if FERC does not act within sixty days of filing due to lack of quorum or otherwise, PJM's proposal will go into effect by operation of law; this automatic effectiveness does not occur under Section 206. The higher standard under Section 206 is appropriate for circumstances where PJM is acting contrary to the views expressed by a majority of voting Members. Thus, the instant proposal is at bottom an unabashed effort to take away the veto power of the Members Committee, limited as it is by PJM's existing backstop authority, over revisions to PJM's RTEP process.

The proponents indicate that PJM is the only RTO lacking Section 205 filing rights over its planning processes. Of course, the Commission's policy is to allow for regional differences in RTOs. But the proponents ignore the fact that each RTO's governing documents represent a unique compromise, or a litigated outcome, that balances the rights and obligations of all stakeholders. For example, Midcontinent Independent System Operator, Inc. (MISO) governance requires that the Organization of MISO States, Inc. (OMS) have direct input into transmission planning and an opportunity to request that MISO make certain cost allocation filings at the option of OMS. The proposal here includes no such mitigation. Similarly, in ISO New England Inc. (ISO New England), the New England Power Pool (NEPOOL) Participants Committee has the right to file under Section 205 an alternative proposal to a proposal filed by ISO New England. This allows FERC to consider the merits of both proposals and accept whichever proposal is just and reasonable and preferable. Thus, the asserted quest for uniformity among RTOs does not support unilaterally taking key rights and responsibilities away from the PJM Members Committee.

The fundamental problem with the proposal is the unjustified power grab described above. But there are several additional concerns worth noting.³ The proponents' approach circumvents the Member Committee's right to vote on changes to the Operating Agreement. The proposal fails to include a viable road map for implementation because

³ The rushed process has not given all stakeholders sufficient time to fully consider the effects of proposed changes, such as but not limited to the addition of the word "replace" in Section 5.2 and a heightened standard of review in Section 9.16.3. Accordingly, this letter is not inclusive of all of the concerns with the substance and verbiage of the proposed CTOA revisions, which are not detailed herein.

it is limited to changes to the CTOA and does not provide anything more than vague references to the subsequent filing of related Tariff and Operating Agreement revisions, by PJM, after PJM develops those, at the direction of FERC, following acceptance of the CTOA revisions. The proponents, therefore, do not include a complete package, but instead seek to bind PJM and its Members to implementing a half-baked proposal, the implications of which FERC will necessarily lack the ability to fully consider.

The proposal seeks to bind PJM such that it may “[m]ake no filing under Section 205 of the Federal Power Act that is inconsistent with [the CTOA] or seeks to modify its terms without the express consent of the [CTOA] Parties obtained through a vote” Section 6.2.4(b)(ii) of the proposal would allow Transmission Owners the ability to veto PJM’s inclusion of particular facilities in the RTEP, as long as the Transmission Owner provides a “rationale.” So the proponents seek to tie PJM’s hands regarding both future changes to PJM’s planning processes and implementation of those processes.

The proposal invents a divisive new subcategory of Members – CTOA Designated Parties – that are not parties to the CTOA, and therefore cannot vote at TOA-AC meetings. Nevertheless, these parties “shall be subject to the rights, commitments and undertakings of a Party to [the CTOA] to the extent applicable.” It is unclear how the CTOA can impose obligations on non-parties and the proponents have failed to offer any reasoned justification supporting these proposed revisions. It is also entirely unnecessary.⁴

Finally, the proposal affords closed-door meetings between and among PJM Transmission Owners and the PJM Board without the benefit of any transparent, publicly available meeting agenda or meeting notes, which is the protocol adhered to for other sector meetings with the PJM Board, raising questions as to whether such meetings can result in undue influence by PJM Transmission Owners over PJM.

For the foregoing reasons, the undersigned respectfully urge the Board to oppose this proposal.

On behalf of,

American Municipal Power, Inc.	New Jersey Rate Counsel
AMP Transmission, LLC	Old Dominion Electric Cooperative
Delaware Division of the Public Advocate	PJM Industrial Customer Coalition
LS Power	Public Power Association of New Jersey

⁴ Designated Entities that would qualify as “CTOA Designated Parties” are required to enter into a Designated Entity Agreement (DEA) with PJM. The DEA is a carefully crafted *pro forma*, FERC-approved agreement that defines the rights and obligations of the Designated Entity with respect to the construction of a selected regional transmission project.