

February 27, 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 Amendments proposed by AEP, AES Ohio, Exelon, and PPL

Dear PJM Board of Managers:

The below listed Transmission Owners (“TOs”) write to respond to the letter submitted by a limited group of certain PJM stakeholders (“Stakeholders Letter”) regarding the proposed amendments to the Consolidated Transmission Owners Agreement (“CTOA”) that American Electric Power Company, AES Ohio, Exelon and PPL Electric Utilities have proposed (“CTOA Amendments” or “Amendments”) and that are being considered by the full Transmission Owners Agreement-Administrative Committee (“TOA-AC”) and the PJM Board of Managers (“PJM Board”). The key change proposed by the CTOA Amendments is to provide rights under Section 205 of the Federal Power Act for PJM to propose important and necessary changes to the Regional Transmission Expansion Planning Protocol (“Planning Protocol”) (currently in Schedule 6 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”). Suggestions that the amendments contain a number of other provisions that would somehow harm planning, undermine stakeholder processes, or provide the TOs some kind of unwarranted advantage are simply incorrect. The Stakeholders Letter significantly misstates and misunderstands the CTOA Amendments, and misrepresents their intent and effect.

The undersigned TOs collectively own nearly all of the transmission assets in PJM and have transferred to PJM control of nearly \$70 billion of their assets to help maintain a reliable electric grid. To support reliability during the historic energy transition currently in its early stages, the TOs have concluded that PJM’s ability to ensure future reliability and affordability for customers would be enhanced by PJM having Section 205 rights over the Planning Protocol. The TOs propose to do so through amendments to their foundational contract with PJM by which control of their assets was turned over to PJM for specified purposes that allow PJM to exist and perform its functions. The long-overdue Section 205 provision ensures that PJM is on a comparable footing with other RTOs in the nation, and is consistent with the overall allocation of PJM Tariff filing rights among the TOs and PJM that has been in place for two decades to govern the TOs’ commitments to PJM and the transfer of specified rights. It is a straightforward proposal that is in PJM’s interest and that should be readily approved by this Board.

With that said, in an effort to further assist the Board and interested stakeholders, we wish to correct several points that have been raised to give the mistaken impression that something more is going on.

1. The Stakeholders Letter incorrectly alleges that the CTOA Amendments give the TOs the ability to “prompt” PJM to make Planning Protocol changes on their behalf, ignoring other stakeholders. Nothing in the CTOA Amendments increases the power or influence of the TOs over PJM planning. Once the Planning Protocol is part of the PJM Tariff, PJM will be guaranteed the “exclusive and unilateral right to make Section 205 filings,” a right other RTOs already have. PJM alone, subject to the stakeholder process and the approval of this Board, will decide whether to make a Section 205 filing to change the planning process. The stakeholder processes also remain fully in place, as confirmed by Section 7.5.1(v) of the proposed Amendments. The revisions simply ensure that a minority of stakeholders will not be able to prevent PJM from presenting important changes to FERC for consideration and acceptance. All stakeholders, including the TOs, will also retain their rights to participate fully in the FERC process.¹

2. The Stakeholders Letter suggests uncertainty as to the implementation of the CTOA Amendments following FERC’s acceptance of the proposal. The filing will request that FERC, upon its acceptance of the CTOA Amendments, direct PJM to submit a compliance filing making the necessary changes to the PJM Tariff to include the Planning Protocol. Once FERC accepts those changes and makes them effective, parallel provisions in the Operating Agreement that are inherently obsolete will and should be removed. Doing so raises no material issues – FERC refuses to consider substantive changes in compliance filings – but requires careful, time-consuming work that only PJM as Tariff administrator can do. It also ensures a seamless transition with no gap in planning. Compliance filings are necessarily done after a FERC acceptance, because until FERC accepts the CTOA Amendments, there is no FERC order to comply with.

3. The Stakeholders Letter notes that proposed new CTOA Section 6.3.11 prohibits PJM from making filings under Section 205 that are inconsistent with the CTOA without the consent of PJM’s contractual counterparties, the TOs acting under the CTOA. Such prohibitions are an inherent right of contractual parties, but confusion on that point by other parties has led to significant disruptions to the planning process, and unnecessary time and costs being incurred at PJM and in the courts.² The proposed amendments thus expressly codify this principle to minimize adverse consequences in the future. The TOs have transferred to PJM control of over nearly \$70 billion of their assets to help maintain a reliable electric grid. System reliability is of the utmost importance to the TOs in this transfer, with PJM responsible for ensuring overall

¹ Upon joining PJM, each TO voluntarily transfers to PJM its rights to plan the system, including enhancements and expansions to its facilities that it otherwise would include in its own tariff under its inherent Federal Power Act filing rights. *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002) (“*Atlantic City*”), *petition to enforce mandate granted, Atl. City Elec. Co. v. FERC*, 329 F.3d 856 (D.C. Cir. 2003). By the CTOA Amendments, PJM and the TOs are agreeing that the transferred planning will be done according to a Tariff schedule. The reference in the existing CTOA language to the Operating Agreement is not a delegation of Section 205 rights to the PJM Members Committee. The PJM TOs and PJM can change their agreement subject to FERC acceptance under Section 205.

² See *PJM Interconnection, L.L.C.*, Docket No. ER20-2308-000 (July 2, 2020)(ultimately rejecting an attempt to interfere with the TOs’ contractual rights over end of life planning).

regional reliability and the TOs responsible for local reliability. The CTOA is a carefully crafted balance of rights and responsibilities, reflecting the truism that responsible companies do not enter into contracts affecting billions of dollars of their assets and leave their counterparty free to make a regulatory filing to change the deal, unless a very high threshold is met. Neither PJM nor the TOs can violate commitments under the CTOA, and it is important to incorporate that clarity into the contract.³

4. Certain stakeholders have asked about the proposed dispute resolution process in the CTOA Amendments. That process is likewise consistent with agreements of this type. PJM exercises its own judgment as to its interpretation of the terms of the agreement, including whether or not a Section 205 filing is consistent with the CTOA. If the TOs dispute that, the dispute will be resolved under one of two dispute resolution provisions in the CTOA. If PJM's views prevail or no resolution is reached, PJM is free to make the Section 205 filing and the issue will be resolved by FERC.⁴

5. The Stakeholders Letter incorrectly asserts that proposed Section 6.3.4(b)(ii) "would allow [TOs] the ability to veto PJM's inclusion of particular facilities in the RTEP." Once PJM determines that it is obligated to include the project in the RTEP and direct it to be constructed, it has the authority to do so. The CTOA Amendments do not change that authority. Proposed Section 6.3.4(b)(ii) and its parallel provision, Section 4.1.4(b)(ii), require PJM to consult with the TO where an RTEP project would more efficiently and cost-effectively address a project that TO has proposed. But the revised CTOA would ensure that the TO has an obligation to document a decision to proceed anyway. There is no intention to replace the processes that exist in Attachment M-3 to the PJM Tariff or the PJM Manuals.⁵

6. The Stakeholders Letter claims that the new category of "CTOA Designated Parties" is divisive. It is not. First, nothing in the CTOA Amendments changes the requirement

³ Although not raised in the Stakeholders Letter, some of its signatories have questioned the modification language in Section 9.16.3. PJM has been a signatory to the CTOA since 2006, and actively negotiated that agreement setting out its and the TOs respective rights and responsibilities. Given the amount of investment involved, the commitments made, and the gravity of the rights and responsibilities shared, the CTOA provisions governing the TOs' and PJM's mutual rights and responsibilities have been governed by the *Mobile-Sierra* contractual principle since PJM and the TOs agreed to the CTOA in settlement of the *Atlantic City* litigation, in which the court recognized the TOs' important contractual rights. Section 9.16.3 does not change this reality; it only recites it, and protects PJM's contractual rights and interests as well.

⁴ Filing rights disputes are addressed under CTOA Section 7.6 and Tariff, Section 9.3. If invoked, a neutral makes the termination, with either party free to bring it to FERC under Section 206. Other disputes are addressed by the new Attachment B, Dispute Resolution Procedures. If no resolution is reached, PJM would be free to make its Section 205 filing.

⁵ The Stakeholders Letter also complains about the addition of the word, "replace" to Section 5.2. The courts have recently confirmed that the TOs retained the right to replace their facilities. *Am. Muni. Power, Inc. v. FERC*, 86 F.4th 922 (D.C. Cir. 2023). The word "replace" reflects that decision and removes any alleged ambiguity.

to sign a Designated Entity Agreement (“DEA”) or its content.⁶ Second, the requirement of a DEA came about because PJM needed a document committing a non-incumbent RTEP designee to do what TOs are committed to do through the CTOA. In subsequent litigation, FERC ruled that the requirements the DEA placed on non-incumbents exceeded those placed on the TOs under the CTOA. The answer to both of these concerns, which the CTOA Amendments adopt, is to put non-incumbent designees on the same footing with respect to obligations to PJM as Parties to the CTOA. Agreeing to those obligations will become required to accept the RTEP designation.⁷ Going forward, PJM will be able to evolve the DEA requirement and the DEA itself so that the administrative burdens on non-incumbents and TOs are streamlined and better address the mission of building RTEP projects. Finally, proposed Section 6.3.3(iv), which authorizes PJM to designate non-incumbents pursuant to the CTOA, simply memorializes the post-Order No. 1000 regime. PJM’s authority to designate any entity to construct RTEP projects enhancing or expanding the PJM Transmission System was a responsibility transferred to PJM under the CTOA.

7. The Stakeholders Letter discusses the annual “State of the Agreement” meeting provided for in proposed Section 2.3. This meeting is not with the whole PJM Board, but only with its Reliability and Security Committee -- the Board members that focus on PJM’s transmission responsibilities.⁸ The meeting is not generally open because it could involve discussion of restricted transmission function information subject to FERC’s standards of conduct or national security CEII information. There is nothing unusual or problematic with the parties to an agreement annually engaging in a frank exchange of views regarding the planning and operation of the country’s largest transmission system under their agreement. The TOs have the responsibility for “keeping the lights on.” The TOs are answerable to their states and their customers, who they are obligated to serve. They have voluntarily shared certain elements of that responsibility with PJM pursuant to the CTOA. There is no “undue influence” in the TOs and PJM Board members conferring on an annual basis as to how they are carrying out their respective responsibilities and how they can do a better job.

In sum, the CTOA Amendments represent a carefully balanced approach to addressing the serious problem of PJM’s lack of Section 205 filing rights with respect to the Planning Protocol, as well as a needed update and clarification of PJM’s and the TOs’ rights and commitments in light of experience under our contract over the last two decades. It has been crafted with input from PJM’s experienced staff and has been reviewed by PJM’s senior officers. The undersigned

⁶ As noted numerous times in the discussion of the CTOA Amendments, no change to the substance or requirements of the Planning Protocol is part of the CTOA Amendments. If any changes are made they will be made after a future PJM stakeholder process and a PJM Section 205 filing. The DEA itself is an attachment to the Tariff and already subject to PJM’s Section 205 filing rights as a Tariff term and condition.

⁷ Contrary to the Stakeholders Letter, PJM’s ability to impose the obligation to be a CTOA Designated Party is no greater nor less than its ability to impose PJM membership and signing a DEA on a non-incumbent.

⁸ Three of the signatories to the Stakeholders Letter, LS Power, AMPT and ODEC are TOs able to participate in the meeting.

TOs reaffirm their commitment to helping PJM meet the daunting challenges of the next several years and urge the PJM Board to agree to the proposed CTOA Amendments that address their mutual rights and responsibilities.

Respectfully submitted,

AES Ohio

Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.

Duquesne Light Company

East Kentucky Power Cooperative, Inc.

Exelon Corporation, on behalf of Atlantic City Electric Company, Baltimore Gas and Electric Company, Commonwealth Edison Company, Delmarva Power & Light Company, PECO Energy Company, and Potomac Electric Power Company

FirstEnergy Service Company on behalf of its affiliates American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Keystone Appalachian Transmission Company, Mid-Atlantic Interstate Transmission LLC, Monongahela Power Company The Potomac Edison Company and Trans-Allegheny Interstate Line Company

PPL Electric Utilities Corporation

Public Service Electric and Gas Company

Rockland Electric Company

Virginia Electric and Power Company d/b/a Dominion Energy Virginia