



Organization of PJM States, Inc. (OPSI)

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April 3, 2024

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

Dear Mr. Takahashi and Mr. Asthana:

On February 6, 2024, a group of PJM Transmission Owners (“the Sponsors”) posted proposed amendments to the Consolidated Transmission Owners Agreement (“CTOA”). In their cover letter, they note that in their view PJM needs additional independence to meet future reliability challenges. They state the proposed amendments to the CTOA would give the PJM Board unilateral and exclusive authority to file changes to the RTEP Protocol by moving it from the Operating Agreement (“OA”) to the Open Access Transmission Tariff (“Tariff”).

OPSI agrees¹ with the Sponsors that the PJM Board should have exclusive authority to amend the regional transmission planning rules commensurate with its responsibility to ensure the reliability of the grid. But, how the PJM Board comes about that authority is an important detail. The location of Schedule 6 in the OA reflects a long history of compliance and compromise. The process for amending the OA is clear and requires a two-thirds vote of the membership. Even after much engagement and independent research, it is still not clear to OPSI that parties to the CTOA have the authority to transfer the relevant 205 rights by simply amending the CTOA.

If the PJM Board is confident that Transmission Owners can transfer 205 rights over regional planning via amendments to the CTOA, OPSI strongly urges the PJM Board to only agree to the changes necessary to accomplish such a transfer. OPSI is very concerned that some of the proposed amendments to the

¹ This letter was approved by the OPSI Board on April 3, 2024 with the support of the following states: Delaware PSC, PSC of District of Columbia, Illinois CC, Kentucky PSC, Maryland PSC, Michigan PSC, New Jersey BPU, North Carolina UC, Pennsylvania PUC, Tennessee PUC, PSC of West Virginia. The following states abstained: Indiana URC, PUC of Ohio, Virginia SCC.

CTOA exceed what is necessary to give the PJM Board these filing rights, to the ultimate detriment of retail consumers. If objections are filed and FERC finds a single amendment to be unjust and unreasonable, it could reject the Sponsors' entire proposal. Therefore, OPSI encourages the PJM Board to limit its support of the Sponsors' proposal to only those amendments *strictly necessary* to transfer to the PJM Board FPA Section 205 rights over the RTEP Protocol.

Inclusion of superfluous and harmful modifications or new provisions in an amended CTOA filed at FERC will likely result in OPSI protesting the proposal, even though we agree with the primary purpose of the PJM Board having the relevant 205 rights.

OPSI identifies the following list of amendments to the CTOA proposed by the Sponsors, some of which may reduce PJM's independence, some which may reduce transparency into the PJM Board's decision-making processes, and some that could harm consumers. None of the amendments below appear necessary to transfer Section 205 rights over PJM's regional transmission planning rules to the PJM Board.

Definitions

CTOA Designated Party - The amendments create a new party to the CTOA, a CTOA Designated Party, that is not entitled to cast a vote to amend the CTOA but would nonetheless be subject to the rights and commitments created by the CTOA. The creation of this new party to the agreement could also exempt all transmission developers from entering into Designated Entity Agreements ("DEAs") based on PJM's current interpretation of the OA. DEAs provide important protections for consumers by requiring PJM to monitor whether projects are being completed timely and economically. PJM has interpreted the OA to not require DEAs for parties to the CTOA, and forcing more developers to join the CTOA could further erode PJM's oversight of transmission development after the PJM Board approves projects.

Regional Transmission Expansion Plan - The Sponsors also propose to change the definition of the Regional Transmission Expansion Plan from the plan PJM prepares to identify enhancements and expansions to the "Transmission System" to "the plan prepared... for the enhancement or expansion of the Parties' Transmission Facilities." The Sponsors have not explained the distinction between these terms. OPSI is concerned that this amendment could make it harder for non-incumbent transmission developers to participate in PJM's transmission planning process and that it could limit PJM's options to cost-effectively plan the transmission system.

9.16.3 – Other Matters; Modification

The amendments attempt to define five articles in a specific way to establish the facts necessary for FERC to extend *Mobile-Sierra* deference to these articles. If FERC grants *Mobile-Sierra* deference to these articles, it raises the bar for any entity opposing the outcomes of those terms and conditions and could limit FERC's ability to ensure the processes in these articles produce just and reasonable rates. FERC would be required to *presume* the terms are just and reasonable and would only be able to overcome that presumption with a showing that the articles harm the public

interest. This is a more difficult standard to overcome than FERC finding the rules produce unjust and unreasonable rates, an already difficult standard to meet.

This is very concerning for OPSI. PJM directs expenditures of billions of dollars on transmission each year, and much of this spending is driven not by PJM but by parties to the CTOA. Reducing FERC's ability to determine rates are unjust and unreasonable represents a very real risk to consumers that unjust and unreasonable spending could become prevalent in the PJM region.

Each of the articles discussed below would be subject to this heightened standard of review if FERC interprets amendments to these articles as a contract between the PJM Board and the Sponsors.

2.3 – Annual Meeting to Discuss the State of the Agreement

The Sponsors propose to create a new, closed meeting between the PJM Board and the Parties to the CTOA to discuss the State of the CTOA. All other stakeholders would be excluded. While closed sessions, from time to time, may be warranted when discussing critical electric infrastructure or other sensitive topics, designating all of these meetings as closed by default places a greater, and unnecessary, burden on the PJM Board to demonstrate that its decision-making process remains transparent and independent.

4.1.4 (b) (ii) – Rights and Responsibilities Transferred to PJM; 6.3.4 (b)(ii) – Obligations of PJM under this Agreement

The Sponsors propose to enshrine in the CTOA a process that may allow costly local projects to supersede more efficient regionally planned solutions. Specifically, this language indicates that when TOs disagree with PJM that a PJM project meets their local needs, they can proceed with their project anyway. The language does not provide any process by which such a disagreement could be resolved, thus implying that the transmission owner's determination is final. These amendments could allow less cost-efficient local transmission to obviate the need for more regionally cost-effective transmission. While this amendment would not stop PJM from *identifying* cost-effective transmission, if TOs proceed to build additional transmission that meets the same needs, PJM's ability to plan the grid cost-effectively could be seriously impacted. This is especially concerning because the new language asserting that the CTOA should receive *Mobile-Sierra* deference will force FERC to presume that the rates this process produces are just and reasonable.

This provision is clearly unnecessary to transfer 205 rights over the RTEP Protocol to the PJM Board. Indeed, this provision would seem to limit the PJM Board's ability to conduct efficient regional planning. Thus, given its potentially far-reaching implications, this provision should not be included in any version of the CTOA amendments to which the PJM Board agrees.

5.2 – Parties Retained Rights; Facility Rights

The amendments add the word *replace* to a list of actions the parties can take with respect to their assets. The Parties claim they are simply reflecting the status quo in this update of the CTOA. That may be true, but as with other sections, if FERC affords *Mobile-Sierra* deference to this article, it

could limit FERC's ability to regulate the interaction between asset management projects and PJM projects. OPSI supports FERC's ability to effectively regulate transmission spending, and this amendment could be counterproductive to achieving that goal.

6.3.5 – PJM's Rights and Commitments

The amendments include new language requiring PJM to maintain its RTO status, "provided such status is consistent with this Agreement." This language goes far beyond what is necessary to transfer 205 rights over the RTEP Protocol to the PJM Board and could be read as subordinating PJM's responsibilities as an independent RTO and its obligation to comply with FERC's requirements for RTOs to its contractual commitments to one set of members. This language implies that in certain circumstances PJM's mere act of maintaining its status as an RTO would constitute a breach of the CTOA.

If the goal is to allow PJM to continue to operate if it loses its RTO status despite its best efforts, this section should be rewritten to say that. PJM's independence in carrying out its responsibilities is crucial to stakeholder confidence in PJM as an organization. That independence should not be limited by new CTOA restrictions on PJM's ability to continue operating as an RTO.

6.3.11 – PJM's Rights and Commitments

Similar to the amendments in Article 6.3.5, this amendment would require that PJM "[m]ake no filing under Section 205 of the Federal Power Act that is inconsistent with this agreement." Limiting the 205 rights these amendments transfer only raises questions as to how independent the PJM Board truly is, recognizing the limits of their independence are defined by the CTOA and not by FERC. With all of the topics that could be included in the rights transferred to PJM, including storage as a transmission asset, grid enhancing technologies, resiliency, and interconnection, the PJM Board should not agree to amendments to the CTOA that could limit its ability to file proposals it otherwise would be able to if this language was not in effect.

7.3.1 – Filing of Transmission Rates and Rate Design Under Section 205

The Sponsors' proposed amendments to this section would allow conversations between them and PJM related to transmission rates to be designated as confidential and protected by various privileges, including attorney client privilege and attorney work product privilege, to the extent the Sponsors and PJM share a common interest in the rates, terms, and conditions to be applied pursuant to the PJM Tariff.

OPSI finds the proposed additions to Section 7.3.1 of the CTOA to be completely unacceptable. First, they are unnecessary to the stated goal of transferring Section 205 filing rights over the RTEP to PJM. Second, and more importantly, they are incompatible with PJM's status as an Independent System Operator. Of course, PJM shares with all of its Members and stakeholders an interest in rates that are sufficient to allow for investment in the facilities necessary to maintain reliability of the grid at just and reasonable rates. However, any contention that PJM has a common interest with TOs in the rates that justifies holding communications to be confidential as to all other interested parties flies in the face of the concept of independence.

As indicated above, OPSI has grave concerns with the harms presented in some of the proposed amendments. Therefore, we ask the PJM Board to reject the unnecessary, harmful, or superfluous provisions in the current proposal.

OPSI supports the PJM Board having 205 rights over the RTEP Protocol, but the CTOA edits before you are not the appropriate path. The PJM Board should instead look for another way to obtain those 205 rights, either by amendment of the OA by Members, a Section 206 filing, or a cleaner amendment to the CTOA that makes only the minimum number of changes necessary to transfer 205 rights. The OPSI Board looks forward to working with the PJM Board on whichever path it chooses.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kent A. Chandler".

Kent A. Chandler, President
Organization of PJM States, Inc