

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

PJM Interconnection, L.L.C.)	Docket Nos.	ER24-2690-000
)		EL24-26-000
)		ER22-2931-001

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF
PJM INTERCONNECTION, L.L.C.**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213, PJM Interconnection, L.L.C. (“PJM”) respectfully submits this Motion for Leave to Answer and Answer to the August 22, 2024 Motions to Intervene and Comments of Leeward Renewable Energy, LLC and Vesper Energy Development LLC (together, the “PJM Developers”) in the above-captioned proceeding.¹

The PJM Developers assert that PJM’s August 2, 2024 compliance filing of proposed changes to the PJM Open Access Transmission Tariff (“Tariff”)² “do[es] not fully resolve the concerns addressed” in the Commission’s December 20, 2023 order.³ Rather than creating further ambiguity regarding third-party land rights obligations under

¹ *PJM Interconnection, L.L.C.*, Motions to Intervene and Comments of the PJM Developers, Docket Nos. ER24-2690-000, et al. (Aug. 22, 2024) (“PJM Developers Comments”).

² *PJM Interconnection, L.L.C.*, Compliance Filing, Docket No. ER24-2690-000 (Aug. 2, 2024) (“Compliance Filing”). Terms not otherwise defined herein shall have the same meaning as set forth in the Tariff, the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., or the Reliability Assurance Agreement among Load Serving Entities in the PJM Region.

³ PJM Developers Comments at 1; *see also PJM Interconnection, L.L.C.*, 185 FERC ¶ 61,202, at P 41 (2023) (“Show Cause Order”); *PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,126, at P 32 (2024) (“May 31 Order”) (requiring PJM to respond to the Show Cause Order or make a filing proposing Tariff revisions on or before August 2, 2024).

the Tariff, the Compliance Filing resolves any question as to the party responsible to procure third-party land and land rights by tying those obligations to the Site Control requirements for Generator Interconnection Requests.⁴ The Compliance Filing fully responds to the Commission’s directive to explain the changes to the Tariff necessary to remedy the concerns identified in the Show Cause Order,⁵ and no further revisions or clarifications are needed. The Compliance Filing should therefore be accepted as filed.

I. MOTION FOR LEAVE TO ANSWER

While an answer to an answer is not a matter of right under the Commission’s regulations,⁶ the Commission routinely permits such answers when the answer provides useful and relevant information that will assist the Commission in its decision-making process,⁷ assures a complete record in the proceeding,⁸ and provides information helpful to the disposition of an issue.⁹ This answer satisfies these criteria, and PJM therefore respectfully requests that the Commission accept this pleading.

⁴ See Compliance Filing at 2.

⁵ Show Cause Order at P 41; see also May 31 Order at P 32 (requiring PJM to respond to the Show Cause Order or make a filing proposing Tariff revisions on or before August 2, 2024).

⁶ 18 C.F.R. § 385.213(a)(2).

⁷ See, e.g., *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,057, at P 94 (2012) (accepting answers that “provided information that assisted us in our decision-making process”); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 26 (2008) (same); *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,083, at P 23 (2007) (permitting answer to protests when it provided information that assisted the Commission in its decision-making process).

⁸ See, e.g., *Pac. Interstate Transmission Co.*, 85 FERC ¶ 61,378, at 62,443 (1998), *order on reh’g*, 89 FERC ¶ 61,246 (1999); see also *Morgan Stanley Cap. Grp., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017, at 61,036 (2000) (accepting an answer that was “helpful in the development of the record”).

⁹ See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100, at 61,287 n.11 (1999).

II. ANSWER

A. The Compliance Filing Fully Resolves the Issues Identified in the Show Cause Order.

The Compliance Filing clarifies responsibility for the procurement of third-party land and land rights in the context of the Site Control requirements for Generator Interconnection Requests.¹⁰ Specifically, PJM proposes to (1) tie third-party land acquisition obligations to the Site Control requirements in Tariff, Part VII, Subpart A, section 302, and Tariff, Part VIII, Subpart A, section 402;¹¹ (2) require that the Transmission Owner acquire the necessary land or land rights at the Project Developer's expense, rather than have the Project Developer assume responsibility for engaging in those efforts;¹² and (3) allow Project Developers and Transmission Owners the flexibility to negotiate an alternative arrangement for the procurement of additional land and land rights.¹³

The PJM Developers assert that the Compliance Filing “leave[s] open the question of which party—the transmission owner or [Project Developer]—has the obligation to acquire third party property rights to the extent that transmission owner interconnection facilities and network upgrades are identified earlier in the study process.”¹⁴ Specifically pointing to Part VIII Site Control obligations at Decision Point I,¹⁵ the PJM Developers claim that because Project Developers are not required to demonstrate Site Control for

¹⁰ Compliance Filing at 2.

¹¹ See proposed Tariff, Part VII, Subpart A, section 302; proposed Tariff, Part VIII, Subpart A, section 402.

¹² See proposed Tariff, Part VII, Subpart A, section 302(B); proposed Tariff, Part VIII, Subpart A, section 402(B).

¹³ See *id.*

¹⁴ PJM Developers Comments at 5.

¹⁵ Tariff, Part VIII, Subpart C, section 406(A)(1)(b).

Network Upgrades at this stage, the Commission should direct PJM to revise the Tariff to state that Transmission Owners are obligated to acquire property rights from third parties “regardless of the stage of the study process in which they are identified except for any facilities for which an interconnection customer has an explicit obligation to demonstrate site control.”¹⁶

The PJM Developers’ claim is misdirected. As the Compliance Filing makes clear, “[u]nder PJM’s new interconnection rules set forth in Tariff, Parts VII and VIII, Project Developers are required to demonstrate Site Control for land that is necessary to complete a New Service Request.”¹⁷ The Tariff explicitly states that the scope of a Project Developer’s obligation to demonstrate Site Control includes Network Upgrades, if applicable. Specifically, Tariff, Part VII, Subpart A, section 302 and Tariff, Part VIII, Subpart A, section 402 outline Site Control evidentiary requirements and include land necessary to accommodate Transmission Owner Interconnection Facilities and Network Upgrades:

Site Control is evidence provided by the Project Developer to Transmission Provider in relation to Project Developer's New Service Request demonstrating Project Developer's interest in, control over, and right to utilize the Site for the purpose of constructing a Generating Facility, Merchant Transmission Facilities, Interconnection Facilities, and, *if applicable, the Transmission Owner's Interconnection Facilities and/or Network Upgrades at the Point of Interconnection.*¹⁸

The PJM Developers’ attempt to cherry-pick the requirements for Site Control demonstration at a specific phase of the interconnection process should not be allowed to

¹⁶ PJM Developers Comments at 7.

¹⁷ Compliance Filing at 3.

¹⁸ Tariff, Part VIII, Subpart A, section 402(A) (emphasis added).

detract from Project Developers’ clear obligation to demonstrate Site Control for Transmission Owner Interconnection Facilities and Network Upgrades at the Point of Interconnection. Moreover, the PJM Developers’ argument reflects a lack of understanding of the Facilities Study process which involves the performance of detailed studies of the physical interconnection work (Phase II) and violation mitigation (Phase III).¹⁹ To the extent any additional land or land rights would be needed to facilitate a generator interconnection, such land or land rights would be identified during the Facilities Study process. Accordingly, the Compliance Filing includes revisions clarifying that a “Project Developer shall retain sole responsibility to demonstrate Site Control during all phases of the New Service Request,”²⁰ *except as provided in proposed subsection (B)*, which provides that any land or land rights identified during the Facilities Study procedures, in addition to those identified and secured by Project Developer pursuant to the Tariff’s existing Site Control provisions, would be procured by the Transmission Owner at the Project Developer’s expense.²¹

Thus, to the extent any open question previously existed, the Compliance Filing provides an answer: Project Developers are responsible to obtain third-party land or land rights, including—if applicable—for Transmission Owner Interconnection Facilities and Network Upgrades at the Point of Interconnection. Transmission Owners are responsible to obtain, at Project Developer’s expense, any additional third-party land or land rights to

¹⁹ *PJM Manual 14H: New Service Requests Cycle Process*, 152-53 (July 26, 2023), <https://www.pjm.com/-/media/documents/manuals/m14h.ashx>.

²⁰ Proposed Tariff, Part VII, Subpart A, section 302(A) (emphasis added).

²¹ *Id.* (“Except as provided in subsection (B), Project Developer shall retain sole responsibility to demonstrate Site Control during all phases of the New Service Request.”).

the extent such third-party land or land rights are identified during the Facilities Study process.²²

The PJM Developers insist that tasking Project Developers with the obligation to acquire third-party land or land rights needed for construction of Transmission Owner Interconnection Facilities and Network Upgrades would be inconsistent with Order No. 2003.²³ But this argument ignores the fundamental changes to PJM’s interconnection rules that have occurred in the intervening twenty years. In November 2022, the Commission issued the order accepting PJM’s interconnection process reforms, which included new Site Control rules for which the Commission granted PJM an independent entity variation to depart from Order No. 2003.²⁴ As PJM has explained in the proceedings underlying the Compliance Filing, PJM is in the process of implementing these reforms, which were specifically designed in partnership with, and strongly supported by, PJM stakeholders²⁵ to promote efficiency and expediency in the interconnection process.²⁶ Therefore, the PJM Developers’ arguments should be dismissed as inapposite.

²² Compliance Filing at 11-12.

²³ PJM Developers Comments at 5; *see Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,054, *limited order on reh’g*, 185 FERC ¶ 61,063 (2023), *order on reh’g & clarification*, Order No. 2023-A, 186 FERC ¶ 61,199 (2024), *appeals pending*, Petition for Review, *Advanced Energy United v. FERC*, Nos. 23-1282, et al. (D.C. Cir. Oct. 6, 2023).

²⁴ *See PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,162, at PP 33, 100 (2022) (“[T]o the extent PJM’s proposed reforms reflect deviations from the Commission’s *pro forma* [Large Generator Interconnection Agreement] and LGIP, we find that they satisfy the independent entity variation standard of Order No. 2003.”), *order on reh’g*, 184 FERC ¶ 61,006 (2023).

²⁵ *See PJM Interconnection, L.L.C.*, Tariff Revisions for Interconnection Process Reform, Request for Commission Action by October 3, 2022, and Request for 30-Day Comment Period, Docket No. ER22-2110-000, at 25-28 (June 14, 2022) (providing overview of stakeholder process).

²⁶ *See PJM Interconnection, L.L.C.*, Answer to Motion for Summary Disposition and Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C., Docket Nos. ER22-2931-000, et al., at 4-8 (Apr. 29, 2024) (“April 29 Answer”).

B. The Compliance Filing Is Properly Limited to Revisions to Tariff Parts VII, VIII, and IX.

The PJM Developers’ suggestion that the Compliance Filing is somehow deficient because it did not include changes to the largely obsolete *pro forma* Interconnection Construction Service Agreement (“ICSA”)²⁷ should be rejected. PJM has consistently maintained that while the Show Cause Order applies to the *pro forma* ICSA, the applicable form of interconnection-related service agreement(s) tendered after July 10, 2023, is the Generator Interconnection Agreement or the stand-alone Construction Service Agreement under Tariff, Part IX, Subparts B and J, respectively.²⁸ Therefore, any prospective Tariff changes would prospectively apply to agreements based on the forms contained in Tariff, Part IX, Subparts B and J.

Moreover, the Commission has foreclosed further comment on whether the *pro forma* ICSA is just and reasonable. In its April 29 Answer, PJM explained that it was “willing to modify the language in Tariff, Attachment P, Appendix 2, section 5.3 to resolve the issue of whether the *pro forma* [ICSA] is just and reasonable and not unduly discriminatory or preferential” and included an illustrative example of revised Tariff language to that effect, but did not file any Tariff changes pursuant to section 205 of the Federal Power Act.²⁹ The May 31 Order held that it “consider[ed] PJM’s Answer as a response to the show cause directive and the paper hearing with respect to the issue of whether the New Market Solar ICSA, and the *pro forma* ICSA are unjust and unreasonable or unduly discriminatory in not complying with the requirements of Order No. 2003,” but

²⁷ Tariff, Attachment P.

²⁸ *PJM Interconnection, L.L.C.*, Motion to Hold Section 206 Proceeding in Continued Abeyance, Docket Nos. ER22-2931-000, et al., at 3-4 n.13 (Apr. 2, 2024).

²⁹ April 29 Answer at 2, 8-9.

because it was filed as an answer rather than as a response to the Commission’s section 206 order, the Commission provided an opportunity for additional comments.³⁰ None were filed. As such, the Commission’s consideration of the *pro forma* ICSA is now complete, and PJM properly focused its Compliance Filing on prospective changes to Tariff, Parts VII, VIII, and IX. PJM Developers’ assertion that the Compliance Filing is deficient should be therefore dismissed.

III. CONCLUSION

For the reasons set forth above, the Commission should accept the Compliance Filing as filed.

Respectfully submitted,

/s/ Elizabeth P. Trinkle

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³⁰ May 31 Order at P 31.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 6th day of September 2024.

/s/ Elizabeth P. Trinkle
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