UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM INTERCONNECTION LLC Docket No. ER21-2282-000
PPL ELECTRIC UTILITIES CORP., et al Docket No. ER21-2282-001

INITIAL PAPER HEARING COMMENTS OF THE
AMERICAN CLEAN POWER ASSOCIATION, ADVANCED ENERGY ECONOMY,
NATURAL RESOURCES DEFENSE COUNCIL, SUSTAINABLE FERC PROJECT,
AND SIERRA CLUB

Pursuant to Rule 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,1 the American Clean Power Association (“ACP”), Advanced Energy Economy (“AEE”), Natural Resources Defense Council (“NRDC”), Sustainable FERC Project (“SFP”), and Sierra Club (collectively, “Joint Protestors”) respectfully submit these initial comments in response to the Commission’s November 19, 2021 Order in this proceeding.2 As detailed below, the factual record does not support the rate change that the PJM Transmission Owners (“PJM TOs”) have sought.3 Because the PJM TOs cannot satisfy their burden of proof under Section 205 of the Federal Power Act (“FPA”)4 the Commission should reject their filing.

I. COMMENTS OF JOINT PROTESTORS

The Joint Protestors appreciate this opportunity to respond to the Commission’s questions, which highlight the numerous unsupported aspects of the PJM TOs’ proposal. The Commission has appropriately noted that “the Proposed Revisions have not been shown to be just and

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3 PJM Tariff Revisions to Implement Transmission Owners’ Funding of Network Upgrades, Docket No. ER21-2282-000 (June 30, 2021) (“Initial Filing”).
reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful."5 The Joint Protestors respectfully submit that much of the record developed to date demonstrates the manifest inadequacies of the PJM TOs’ proposal; accordingly, where appropriate, the Joint Protestors refer below to their previous Protest6—as well as to their comments7 responding to the PJM TOs’ answer to the Commission’s August 20, 2021 deficiency letter.8 Additionally, Joint Protestors make reference to filings and orders regarding nearly-identical self-funding proposals in the Mid-Continent Independent System Operator (“MISO”) and New York Independent System Operator (“NYISO”) regions.

1. PJM TOs’ Proposed Revisions are premised on their arguments that owning and operating Network Upgrades entails significant risks for which PJM TOs do not earn a return or profit.

   a. Are the risks that PJM TOs argue are associated with owning and operating Network Upgrades already incorporated into PJM TOs’ Commission-approved ROEs, such that PJM TOs are already compensated for these alleged risks? Please explain further why or why not.

As Joint Protestors and numerous other commenters to this proceeding noted in previous submissions, there are no significant risks associated with owning and operating Network Upgrades that have not already been incorporated into Commission-approved returns on equity (“ROE”). In fact, PJM TOs have failed to articulate any meaningful risk at all. As Joint Protestors previously stated:

   The ‘risks’ PJM TOs cite as justifying increased returns are pure speculation. PJM TOs do not identify a single risk from the application of generator funding of Network Upgrades ... that has ever impaired their ability to attract capital or resulted in a rating agency downgrade that might impair their ability to serve the

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5 Paper Hearing Order at P57.
7 Comments of the Joint Protestors Docket No. ER21-2282-000 (October 12, 2021) (“October 12, 2021 Joint Comments”).
public interest. Further, the examples of risk that the PJM TOs identify have no relation to Network Upgrades, have never involved Network Upgrades (or other network upgrades in other regions of the United States), and are of the type of risks that are regularly recovered in rates approved by a state commission.9

And as Joint Protestors’ expert witness Michael Goggin noted in his testimony in this matter, the PJM TOs have themselves acted in ways indicating their agreement that the financial risks associated with building transmission using the Existing Funding Approach are not material; if they were material, then the PJM TOs were and continue to be under “an obligation to disclose [any significant risks] to investors in Securities and Exchange Commission (“SEC”) reports.”10

As the Joint Protestors explained in detail in their October 12, 2021 Joint Comments:

[U]nder Security and Exchange Commission (“SEC”) regulations, the PJM TOs are required to disclose any potential future risks to their investors. For example, the SEC’s regulations require companies to ‘focus specifically on material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition.’ Although PJM TOs claim that financial risks associated with network upgrades will grow in the future, Joint Protestors remain unaware of any SEC filing in which any PJM TO has identified the absence of a rate of return on network upgrades as a ‘material event’ or ‘uncertainty’ that would change its ‘future financial condition’ – despite their obligation to do so if these ‘risks’ were truly ‘reasonably likely’ and ‘material’. The applicable SEC reports are filed annually, and there has been adequate time for any such risks to be identified and reflected in these filings.11

There is simply no indication that any PJM TO has identified any meaningful risks relating to the lack of a rate of return on Network Upgrades since the Existing Funding Approach began more than 15 years ago.12

Even if the Existing Funding Approach imposed some de minimis risks on PJM TOs, those risks are already incorporated into Commission-approved ROEs. As the New York

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11 October 12, 2021 Joint Comments.
Interconnection Customers explained in Docket No. EL21-66-000 (regarding a proposal for comparable self-funding practices in the NYISO region):

[Part of the overall system and the overall rate base, transmission assets are treated just like any other part of the system when it comes to risk. That is, the market cost of capital required by investors is based on the overall risk of the entire company enterprise, and it compensates investors for this overall risk. This is often referred to as the ‘baked-in’ phenomenon. The investment made for any given piece of the system is not separately accounted for, nor is the risk associated with any given piece. Once [network upgrades] are rolled into the whole company enterprise, each of the [New York Transmission Owners’] investors receive compensation for any alleged risks . . . via the cost of capital that the market determines is appropriate for the new, updated whole company enterprise . . . [The] more natural and automatic way that increased risk leads to greater compensation . . . is by increases in the rate of return that investors require.]

Thus, even “if there is a risk issue, it will not be uncompensated.” As was the situation with the New York Transmission Owners in that docket, the PJM TOs here “are financially healthy, and the return required by investors for investing in the overall enterprise changes as the risks of the overall enterprise change.”

In short, as Joint Protestors explained in earlier comments in this proceeding, the Joint Protestors have “provided ample evidence – in the form of credit ratings, SEC filings, and Section 204 securities filings – showing that the PJM TOs do not face any material risk from not receiving a return on network upgrades, that any (negligible) incremental risk is indeed fully ‘baked in,’ and that the PJM TOs face no difficulties in raising capital.” Because the PJM TOs have not provided any countervailing evidence, the record simply does not support their request.

b. Addressing a similar dispute regarding the funding of Network Upgrades in the NYISO region, the Commission recently explained that “the Commission calculates a utility’s
return on equity based on the risk profile of the enterprise as a whole.” Please explain whether the inability of the PJM TOs to include Network Upgrades in their rate bases changes the PJM TOs’ credit ratings due to increased enterprise-wide risk, which could affect the composition of PJM TOs’ proxy groups that are used to determine ROEs. In addition, please explain if there are any features of the mix of transmission owners in the PJM region or other factors that would prevent the proxy groups chosen via the existing ROE methodology from reflecting enterprise-wide risks.

The inability of PJM TOs to recover a rate of return on Network Upgrades cannot reasonably be said to impact their credit ratings for the same reasons discussed above: there is neither evidence nor a reasonable explanation for why this might occur. PJM TOs have completely failed to offer evidence of any credit downgrade to any PJM TO, of any risk disclosures to investors pursuant to SEC regulations, or of any indication that any PJM TO might face a credit downgrade due to concerns regarding the Existing Funding Approach. In a § 205 proceeding, the burden falls squarely upon the PJM TOs to provide any such evidence, consistent with the high standard under Hope for revising an existing funding mechanism.

Furthermore, as Joint Protestors have previously noted, there is more than a mere lack of evidence that the Existing Funding Approach harms the PJM TOs’ risk profiles: in fact, there is evidence—from PJM TOs’ own securities filings—that the current approach is not having such an impact. As such, the Commission should afford no weight to the PJM TOs’ claims related to the purported risks that they face associated with an alleged inability to attract capital. The Joint Protestors are unaware of any SEC filing from any transmission owner in any region utilizing

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17 Cent. Hudson Gas & Elec. Corp. v. N.Y. Indep. Sys. Operator, 176 FERC ¶ 61,149, at PP 59 n.127, 60 (2021) ("When setting a just and reasonable return on equity for a utility, the Commission will typically construct a proxy group of utilities that were given similar credit risk ratings by a rating agency as the utility being reviewed. The proxy group utilities are then used to create an upper and lower limit on the zone of reasonableness for the return on equity that may be approved for the utility under review. As a result, if a utility has its risk profile downgraded then its proxy group will change accordingly and so will the return on equity zone of reasonableness.").
18 Fed. Power Comm’n v. Hope Nat. Gas Co., 320 U.S. 591, 602 (1944) ("The Commission’s order is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences."). Here, the existing generator funding approach in PJM is the “rate order” in question.
generator funding that cites lack of a rate of return on network upgrades as a material risk. This means that the proxy group for determination of ROE would also almost certainly be unaffected.

c. For illustrative purposes, PJM TOs estimate that Network Upgrades would represent 4% of PJM TOs’ current aggregate rate base, accounting for the assumptions noted above. If, as PJM TOs describe, Network Upgrades represent an increasing fraction of their overall transmission systems, please provide a similar estimate that is based on PJM TOs’ projected aggregate rate base and include all underlying assumptions and calculations.

This question requires information available only to the PJM TOs. Joint Protestors will respond as appropriate in their reply comments.

d. PJM TOs provide data estimating anticipated total costs for Network Upgrades; however, it is not clear how an increase in anticipated total costs for Network Upgrades increases PJM TOs’ risk. If there are uncompensated risks, is it possible to value in monetary terms the increase in risk that a PJM TO could be exposed to when adding Network Upgrades to its system? If so, please provide that monetary value, and explain and justify the method used to calculate the value.

This question requires information available only to the PJM TOs. Joint Protestors will respond as appropriate in their reply comments.

2. PJM TOs’ Proposed Revisions provide an option for PJM TOs to earn a return of and on the capital costs of Network Upgrades, which PJM TOs claim will result in proper compensation for the risks associated with owning and operating those facilities consistent with the manner in which they are compensated for owning and operating other transmission facilities on their systems.

a. Assuming for the purposes of this question that the alleged risks are not already incorporated into PJM TOs’ Commission-approved ROEs, why would incorporating the capital costs of the Network Upgrades that PJM TOs own and operate into PJM TOs’ rate base, such that PJM TOs’ Commission-approved ROEs are applied to those capital costs, result in appropriate compensation for these alleged risks?

This question requires information available only to the PJM TOs. Joint Protestors will respond as appropriate in their reply comments.

b. Are there costs associated with these alleged risks to which it is appropriate to apply PJM TOs’ Commission-approved ROEs?
This question requires information available only to the PJM TOs. Joint Protestors will respond as appropriate in their reply comments.

c. If there are costs, do PJM TOs already recover those costs through their O&M charges?

PJM TOs do have some limited number of transmission upgrade-related costs, including the investment of employee and management time that might otherwise be spent on other activities (imposing opportunity costs). However, as Mr. Goggin stated in his affidavit, “these costs are fully compensated through operation and maintenance (‘O&M’) pass-through rates.” If anything, the staff O&M training and experience paid for by ratepayers would reduce costs for the utility’s other operations, and further reduce costs by helping realize economies of scale from a larger supply of employees, owned construction equipment, spare equipment inventories, etc.” The Commission should also consider PJM TOs’ recovery through state-authorized ROEs to ensure it has a full picture of PJM TOs’ compensation. This is relevant because many TOs, including those in the New York proceeding, recover “the vast majority of the[ir] revenue requirements . . . through their respective retail rates including recovery of projected operation and maintenance (O&M) costs.”

d. If there are uncompensated risks, can the PJM TOs buy additional insurance to offset any or all of these risks and recover the costs for those insurance premiums from interconnection customers as a means of receiving reasonable compensation for providing and operating the Network Upgrades, instead of earning a return on the Network Upgrades? Please explain.

As more fully explained in Joint Protestors’ response to Question 1 above, PJM TOs have failed to demonstrate that they are subject to any uncompensated risks associated with Network Upgrades. As Joint Protestors made clear in their July 28, 2021 Protest, PJM TOs fail to present a single example of transmission owners being held liable for the failure of Network Upgrade

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20 Id.
21 See New York Protest at 11.
Replacing PJM TO-owned older equipment that is more prone to risk with newer equipment obtained under the Existing Funding Approach ultimately reduces operational and safety risks to transmission owners. The facilities associated with Network Upgrades thus do not pose any incremental operational and safety risk, and thus present no need for additional insurance.

Further, even if such risks existed, they would be covered by existing insurance policies that the PJM TOs are already required to carry. PJM TOs have not presented an argument for why this mandatory insurance would provide inadequate protection against these risks, or why state regulators would deny the recovery of these insurance premium or deductible costs from interconnection customers as a means of receiving reasonable compensation.

3. PJM TOs point to the increasing number of Network Upgrades to support the argument that the Proposed Revisions are necessary to ensure PJM TOs can attract new capital that supports the financial integrity of their companies.

   a. To the extent that a PJM TO’s Commission-approved ROE for its rate base may be adjusted upward if a utility takes on materially more enterprise-wide risk associated with Network Upgrades that PJM TOs do not earn a rate of return on, please explain why the upward adjustment in the ROE does or does not enable the utility to continue to attract capital in a manner consistent with Hope and Bluefield.

Joint Protestors note again the complete absence of record evidence showing any present or possible future harm to PJM TOs’ ability to attract capital due to a lack of rate of return on current or planned Network Upgrades. When coupled with the applicability of a Commission-approved ROE across the TO’s transmission rate base, this means that any putative risks associated with Network Upgrades should be considered fully “baked in” (in the words of the Ameren court). The Joint Protestors yet again note that:

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23 See id.
24 See id.
25 Ameren Servs. Co. v. FERC, 880 F.3d 571, 582 (D.C. Cir. 2018)
the PJM TOs appear to have healthy enterprises fully capable of attracting capital, as exemplified by their FPA Sec. 204 filings with FERC;\textsuperscript{26}

to the knowledge of the Joint Protestors, no ratings agency has indicated any concern with present or future risks to any PJM TO based upon the scope of network upgrades;\textsuperscript{27}

to the knowledge of the Joint Protestors, no PJM TO has represented in any securities filing that network upgrades pose a material risk to their creditworthiness or financial integrity; and\textsuperscript{28}

PJM TOs have characterized the factors driving growing interconnection queues and network upgrades (in particular, state clean energy requirements) as revenue opportunities, which, in turn, should continue to draw investors at current Commission-approved ROE levels.\textsuperscript{29}

Joint Protestors submit that these factors, in conjunction with an enterprise-wide ROE, comprise a robust demonstration that the ability to adjust ROE upward has already allowed the PJM TOs to attract capital consistent with the requirements of *Hope* and *Bluefield*. Moreover, the Existing Funding Approach allows for appropriate adjustments to ROE that fully account for any demonstrable or likely risks to transmission-owning utilities, and allows them to maintain their financial integrity by continuing to attract capital.

\textbf{b. Explain whether, and if so, to what extent, the inability of PJM TOs to earn a return of and on the capital costs of Network Upgrades that they own and operate has impacted their ability to attract new capital.}

As Joint Protestors indicated in their July 28, 2021 Protest, publicly available information clearly demonstrates that although the Existing Funding Approach has been in place in the PJM region since at least 2004, no PJM TO has reported an issue attracting capital to serve the public interest.\textsuperscript{30} The PJM TOs’ assertion that they will be unable to attract capital under the Existing Funding Approach is undercut by the fact that the PJM TOs have attracted billions of dollars of

\textsuperscript{26} July 22 Protest at 18-19, n.52 and accompanying text.
\textsuperscript{27} Id. at 20, Att. A.
\textsuperscript{28} Id. at 14-15, Goggin Testimony at Att. B ¶ 29.
\textsuperscript{29} July 28 Joint Protest, Goggin Aff., Att. B ¶at ¶ 30-32.
\textsuperscript{30} See id. at 2.
capital in recent years. Joint Protestors’ review of recent applications submitted to the Commission by individual PJM TOs pursuant to FPA Section 204 reveals that the PJM TOs have collectively received authorization from the Commission to issue over $19.9 billion dollars of new securities since 2019 alone. Further, in each instance in which each respective PJM TO requested authorization from the Commission under § 204 since 2019, the Commission authorized the full amount of securities requested by each PJM TO. Additionally, the PJM TOs’ publicly available

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33 See id.
SEC filings demonstrate the PJM TOs’ borrowing capabilities by showing that the companies have been issued hundreds of millions of dollars of debt in recent years.34

As another indicator of financial health under the Existing Funding Approach, PJM TOs have strong credit profiles.35 Credit rating agencies and equity analysts reflect regulatory risk in their ratings. The Joint Protestors are unaware of any credit downgrade to any PJM TO based upon the absence of a return for Network Upgrades since the Commission approved the Existing Funding Approach. Attachment A to the Joint Protestor’s July 28, 2021 Protest includes a table that lists information on each PJM TO’s credit rating as reported in their credit reports going back two years.36 This information and the affidavit of Michael Goggin, included as Attachment B to the Joint Protestors’ July 28, 2021 Protest, demonstrates that each of the PJM TOs has a high level

35 See id., Attachment A.
36 See id., Attachment A.
of creditworthiness (as acknowledged by PJM TOs) and has been capable of borrowing sufficient amounts needed to meet their needs. This dataset shows that investors have not been deterred from investing in any individual PJM TO, even though the PJM TOs do not earn a rate of return on Network Upgrades under the Existing Funding Approach. Indeed, since 2004 (when the PJM TOs asked to no longer recover a rate of return on Network Upgrades via the Generator Interconnection Procedures) investors have still continued to invest in each PJM TO. PJM TOs fail to provide any evidence to the contrary.

All of this data is also consistent with the Joint Protestors’ review of PJM TOs’ SEC filings—which, as described above, do not appear to contain any identification by any PJM TO of the lack of a rate of return on Network Upgrades as a material or even nonmaterial risk, either at present or in the future. Indeed, no PJM TO has submitted any evidence that shows otherwise.

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38 See July 28, 2021 Joint Protest, Goggin Aff., Att. B.

39 See AEP Form 10-K at 34–46 (filing covering AEP Transmission Co., Appalachian Power Co., AEP Indiana Michigan Power Co., and AEP Ohio Power Co.); DPL Form 10-K at 16–26; Dominion Energy Form 10-K at 36–44 (filing covers Virginia Electric and Power Co.); Pub. Serv. Enter. Group Inc. Form 10-K, at 22–34 (2020), https://www.sec.gov/ix?doc=/Archives/edgar/data/0000081033/000078878421000007/pseg-20201231.htm; PPL Corp. Form 10-K at 23–31; UGI Corp. Form 10-K, at 30–41 (2020), https://www.sec.gov/ix?doc=/Archives/edgar/data/884614/000088461420000052/ugi-20200930.htm; Consolidated Edison Form 10-K at 45–49 (filing covers Orange and Rockland Utils., Inc. and Consolidated Edison Co. of N.Y., Inc.); GE Form 10-K at 44–51 (parent company to Linden VTF, LLC); FirstEnergy Corp. Form 10-K, at 9–22 (2020) (parent company to American Transmission Systems, Inc. and affiliates including Allegheny Power, Mid-Atlantic Interstate Transmission, LLC, Trans-Allegheny Interstate Line Co., Potomac Elec. Power Co., and Jersey Central Power & Light Co.), https://www.sec.gov/ix?doc=/Archives/edgar/data/1031296/0001031296210000020/fe-20201231.htm; Duke Energy Corp. Form 10-K at 25–34; ITC Holdings Corp. Form 10-K at 15–22; NextEra Form 10-K at 20–31; Exelon Corp. Form 10-K at 30–46 (filing covering PECO Energy Co., Baltimore Gas & Elec. Co., Commonwealth Edison Co., Potomac Elec. Power Co., Delmarva Power & Light Co., and Atlantic City Elec. Co.). See Attach. B at PP 30–32. See also AEP Form 10-K, at 12, 26, 34 (“AEP has committed significant capital investments to modernize the electric grid and integrate these new resources, Transmission assets of the AEP System interconnect approximately 16,300 MWs of renewable energy resources. AEP’s transmission development initiatives are designed to facilitate the interconnection of additional renewable energy resources.”); “Additional transmission facilities will be needed based on changes in generating resources, such as wind or solar projects, generation additions or retirements, and additional new customer interconnections. The State Transcos will continue their investment to enhance physical and cyber security of assets, and are also investing in improving the telecommunication network that supports the operation and control of the grid.”; “A significant portion of AEP’s earnings is derived from transmission investments and activities. FERC policy currently favors the expansion and updating of the transmission infrastructure within its jurisdiction. If the FERC were to adopt a different policy, if
PJM TOs have repeatedly cited the investments associated with attaining state renewable energy targets as revenue opportunities.\(^{40}\) In sum, PJM TOs’ argument that they are unable to attract capital under the Existing Funding Approach is undercut by the many indicators of financial well-being outlined above, including attracting billions of dollars in capital in recent years, receiving authorization from the Commission to issue over $19.9 billion of new securities, and maintaining strong credit ratings.\(^{41}\) The Commission should accordingly afford no weight to PJM TOs’ claims related to the purported current or future risks that they face, because these claims are based upon an inability to attract capital under the Existing Funding Mechanisms.

\(^{c}\). Explain whether, and if so, to what extent and on what basis, PJM TOs expect the inability of PJM TOs to earn a return of and on the capital costs of Network Upgrades that they own and operate will impact their ability to attract new capital in the future.

This question requires information available only to the PJM TOs. Joint Protestors will respond as appropriate in their reply comments.

\(^4\). What protections do the Proposed Revisions or does the Tariff elsewhere provide against the potential for undue discrimination by PJM TOs in their election of which Network Upgrades PJM TOs will fund? Are these protections adequate? Why or why not?

The Proposed Revisions include no meaningful protections against the very real potential that elections by the PJM TOs to fund Network Upgrades will result in undue discrimination to interconnection customers As Joint Protestors explained in earlier submissions in this docket, a

\(^{40}\) See id.

\(^{41}\) See July 28, 2021 Joint Protest at 38. Joint Protestors are unaware of any SEC filing subsequent to their July 28, 2021 Joint Protest that reflects identification of such a risk.
PJM TO’s decision to elect to fund Network Upgrades under the Proposed Revisions will often result in interconnection cost increases for the generator in question that would cause disparate treatment among generators, and put the subject generator at a competitive disadvantage in the PJM markets. Joint Protestors illustrated this potential for disparate and discriminatory treatment among similarly-situated generators with a straightforward hypothetical:

Consider a situation in which two developers propose identical projects, with developer A connecting to transmission owner Y and developer B connecting to transmission owner Z. Transmission owner Y elects to fund the necessary Network Upgrades to connect developer A, while developer B funds its own interconnection under the Existing Funding Approach. The result is that the total interconnection cost to developer B will be less than developer A. This provides developer B with a competitive advantage vis-à-vis developer A, for reasons that developer A cannot control. This disparate treatment of similarly situated transmission customers is unduly discriminatory.

In addition, under the Proposed Revisions, PJM TOs that continue to own generation resources in PJM would have incentive and ability to put competing independent generators at a disadvantage by electing to self-fund their Network Upgrades and raise their costs of interconnection. The Commission explicitly recognized this incentive to engage in undue discrimination through transmission interconnection funding in Order No. 2003.

The responses of the PJM TOs to these undue discrimination concerns have been wholly unpersuasive. For example, PJM TOs acknowledge that undue discrimination concerns were raised by several parties, Chairman Glick and Commissioner Clements regarding an identical self-funding framework in MISO; in response, they claim that TOs in PJM and MISO are not similarly situated. This ignores the fact that that TOs and their affiliates in both regions own generating

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42 As discussed further infra, record evidence consistently shows that relative to generator funding, unilateral transmission owner self-funding doubles total costs to generators and increases costs 30-50% on a Net Present Value Basis. See July 28, 2021 Joint Protest at 22-28, and n.60; Oct. 12, 2021 Joint Comments at 7-10.
43 July 28, 2021 Joint Protest at 32.
45 Id. at 24-26; Oct. 12, 2021 Joint Comments at 7-8.
facilities, and thus would have a clear incentive and ability to use self-funding to discriminate against competing generation. More broadly, PJM TOs simply point to the Commission’s approval of self-funding in MISO in response to undue discrimination risks, without making any real case to support their specific proposal here, or to explain why that proposal would not create undue discrimination or preference concerns.46

In addition, PJM TOs have attempted to claim that the Proposed Revisions include two so-called “protections” against undue discrimination: (1) the “transparent process” for electing to self-fund Network Upgrades, and (2) PJM’s general oversight of the interconnection process. But these generic aspects of the Proposed Revisions and the PJM interconnection process are not “protections” against undue discrimination or preference.

First, the “transparent process” provides no meaningful protection. PJM TOs include no Tariff provisions or procedural mechanisms that could limit or condition their unilateral election in situations where discrimination or undue preference concerns could arise.47 The “transparent process” PJM TOs point to is nothing more than a public posting of a “non-binding statement of general intent on the PJM website of how each Transmission owner plans to treat Network Upgrades on its system,” and a requirement that a transmission owner “provide its binding intent to fund each specific Network Upgrade prior to the completion of the Facilities Study.”48 Statements of intent do not prevent actual discrimination or preference in the election to self-fund Network Upgrades, or the mere opportunity to discriminate as the Commission found in Order No. 2003.49

47 Id.
48 Initial Filing at 29-30.
49 Order No. 2003 at P696 (“[T]he Commission remains concerned that, when the Transmission Provider is not independent and has an interest in frustrating rival generators, the implementation of participant funding, including the “but for” pricing approach, creates opportunities for undue discrimination. As the Commission stated in the
Second, PJM’s independent “involvement” in the interconnection process does not protect against undue discrimination or preference. This is because the Proposed Revisions do not appear to give PJM any authority to reject or limit a transmission owner’s option to elect to fund Network Upgrades in cases where discrimination or preference could occur; the PJM TO would have the sole discretion to elect this option, and its election would occur before many of the steps of the interconnection process take place and before the Network Upgrade Funding Agreement is administered by PJM.50 As a result, even if the mechanisms PJM TOs claim are in place could be accurately described as “protections” (which they cannot), they are wholly inadequate to prevent actual or potential undue discrimination or preference in the election to self-fund Network Upgrades.

5. What protections do the Proposed Revisions or does the Tariff elsewhere provide against the potential for PJM TOs to unjustly seek to increase the need for and/or size of Network Upgrades in order to increase their rate base?

If the PJM TO’s’ Funding proposal were approved, the PJM TOs would be financially incentivized to enact stringent local design criteria and push interconnection costs as high as possible to ensure maximum shareholder return for these upgrades. This perverse incentive is often referred to as ‘gold plating.’ Accordingly, the PJM TO Funding proposal, by putting interconnection costs into the PJM TOs’ rate bases, would worsen cost control incentives. In nearly all cases, each PJM TO would thus have an incentive to find the highest-cost vendors to inflate the base upon which it would earn a rate of return.51

6. The Proposed Revisions require the interconnection customer to provide a letter of credit or another form of reasonably acceptable security on the estimated Network Upgrade cost,

NOPR, a number of aspects of the “but for” approach are subjective, and a Transmission Provider that is not an independent entity has the ability and the incentive to exploit this subjectivity to its own advantage. For example, such a Transmission Provider has an incentive to find that a disproportionate share of the costs of expansions needed to serve its own power customers is attributable to competing Interconnection Customers. The Commission would find any policy that creates opportunities for such discriminatory behavior to be unacceptable.”)(emphasis added).

50 Initial Filing at 29-30.
which at the interconnection customer’s discretion may be reduced each year on a prorated portion of the Network Upgrade costs over the term of the NUFA.52

a. The Proposed Revisions require the interconnection customer to provide a letter of credit or another form of reasonably acceptable security on the estimated Network Upgrade cost, which at the interconnection customer’s discretion may be reduced each year on a prorated portion of the Network Upgrade costs over the term of the NUFA.53 The NUFA provides that “[s]ecurity shall remain in place until expiration of this NUFA,” and the default term of the NUFA is 20 years unless otherwise agreed to by the parties.54 As PJM TOs describe, this ensures that security is posted on the cost of the Network Upgrade during the construction of the Network Upgrade and post construction, which is after the Network Upgrade goes into service. The Proposed Revisions provide for PJM TOs to apply the same ROE that they earn on other transmission facilities for which lower security is required post construction. Please explain whether the security requirement in the NUFA lowers the risk that the PJM TOs will not recover their initial investment in the Network Upgrades. As part of your response please explain why it is just and reasonable to apply the proposed ROE to Network Upgrade costs that have a security requirement over the post construction term of the NUFA?

Under the proposed NUFA, interconnection customers are required to provide a letter of credit or other form of security naming either PJM or the applicable Transmission Owner as the beneficiary for the full value of the Estimated Network Upgrade Initial Capital Cost (“ENUC”).55 As the Commission notes in question 6(a), this security presumptively remains in place for a 20-year term, with annual prorating over that term. The NUFA security requirement is also proposed in such a way as to ensure there is no gap between the Interconnection Service Agreement’s security requirement and the NUFA security requirement. Should an interconnection customer default on its obligations under the NUFA, the remaining balance would be immediately due to the beneficiary.

As an initial matter, Joint Protesters oppose a security provision in a NUFA for the reasons stated in their prior pleadings in this docket. Should the Commission approve the NUFA, the PJM

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52 See Initial Filing, Proposed pro forma NUFA, § 4.
53 See id.
54 See id. §§ 2, 4.3.
TOs would be contractually protected against default for the full ENUC. The Joint Protestors therefore submit that it is not just and reasonable to apply the full ROE to Network Upgrade costs that already have a security requirement over the post-construction term. Even assuming arguendo that these upgrades are a source of any incremental uncompensated risk to the PJM TOs—a point Joint Protestors do not concede, as discussed above—the presence of contractual protection must be viewed as a reduction in these putative risks.

b. Given that the security provision is intended to protect against potential non-payment by interconnection customers, please explain whether Network Upgrades could be considered to have less risk, the same level of risk, or more risk than other transmission facilities that do not have similar security requirements.

As explained above, Network Upgrades for which an Interconnection Customer is subject to a security requirement under the NUFA should be considered lower-risk than transmission facilities without such a requirement. In the event of any default on Network Upgrades, the Transmission Owner would have a contractual commitment to be made whole by the Interconnection Customer. To the extent that there is any incremental uncompensated risk associated with Network Upgrades, facilities covered by a NUFA security requirement would be lower risk than the rest of a PJM TO’s system.

Joint Protestors also note that the proposed ability to earn a rate of return on fully secured upgrades is inconsistent with Commission precedent. In 2011, the Commission found in *E.ON Climate & Renewables v. MISO*:

[W]e find that it is unjust and unreasonable to require an interconnection customer to fund the construction of network upgrades up-front and then permit the transmission owner to elect to repay this amount and charge the interconnection customer for the transmission owner's capital costs and income tax allowance over time. That option essentially allows transmission owners to avoid many of the risks
and costs associated with financing a new construction project, while retaining benefits as if they did incur some of those risks and costs.\textsuperscript{56} The Commission’s reasoning in \textit{E.ON} should apply here; there, the Commission found that the financing option in question was unjust and unreasonable due to the misallocation of costs and risks.

c. Given the amount and duration of security requirements, could the Proposed Revisions result in increased costs to interconnection customers for Network Upgrades relative to what transmission customers pay on the net plant of transmission facilities through the transmission rate? Please explain why or why not. Also, please explain if the proposal does result in increased costs, how would recovery of those costs be just and reasonable and not unduly discriminatory or preferential.

The Proposed Revisions would undoubtedly result in increased costs to Interconnection Customers because it would increase direct security obligations (imposed solely on the Interconnection Customer(s)), rather than the transmission rate (which all transmission customers pay, and of which net plant is only one account). It is also important to recognize that while transmission rates are assessed based upon actual transmission service, the NUFA security requirement would also impose substantial opportunity costs on Interconnection Customers. The 20-year term for a letter of credit or other means of security is an additional cost that is expensive to maintain and limits the ability of the Interconnection Customer or parent company to finance other generation development.

Because the imposition of self-funding would be unjust and unreasonable, and is unsupported by evidence, as discussed above, the imposition of these costs on Interconnection Customers would be unjust and unreasonable as well. To recover these costs, Interconnection Customers would need submit higher energy and capacity bids, or sign more expensive Power Purchase Agreements that would ultimately be paid for by ratepayers. In short, acceptance of the

Proposed Revisions would increase costs to Interconnection Customers and ratepayers simply to compensate PJM TOs for purely notional risks.

7. If interconnection customers can obtain financing at a lower or similar rates than PJM TOs, could the Proposed Revisions result in increased costs to interconnection customers interconnecting to PJM TOs’ transmission system relative to the costs to initially fund Network Upgrades? Please explain why or why not.

The record in this proceeding, and in other self-funding proceedings, shows that the Proposed Revisions would significantly increase costs to interconnection customers relative to self-financing upgrades. This is because the rate of return for the Transmission Owner operates as a substantial additional cost, above and beyond any difference in financing rates. The record in this proceeding and other self-funding proceedings consistently shows that Interconnection Customers would be subject to costs that are twice the “sticker price” of Generator Funding, or 30-50% higher on a net present value (“NPV”) basis over a standard 20-year term. To wit:

- Testimony from RWE Renewables in this proceeding states that “The total costs for network upgrades necessary to interconnect a typical generation project approximately double as a result of Transmission Owner self-funding being elected.”

- Testimony from EDF Renewables in this proceeding and in the New York proceeding states that “From EDFR’s experience, total payments over a 20-year period are easily exceeding twice the ‘sticker price’ of the network upgrades, and with an impact of over 30% on a net present value [] basis. With the majority of larger transmission owners in MISO now electing Transmission Owner Funding, the effective cost of all anticipated network upgrades allocated to generation developers in MISO has increased exponentially.”

- Testimony from NextEra Energy Resources regarding the New York self-funding proposal showed that the total amount can be double on an “all-in” basis: “With a 20-year payment term and carrying charges that include the transmission owner’s return on equity (“ROE”), the total amount paid by the project owner for network upgrades can double.”

58 Id. at Decl. of Kate O’Hair, Att. D at ¶ 4; see also Decl. of Stephane Desdunes for EDF Renewables, New York Protest at Att. B (May 7, 2021).
- Testimony from Apex Clean Energy regarding MISO in 2018 showed that Transmission Owner Funding in MISO for four projects would increase costs by 39.3% relative to generator funding, from $30.1 million to roughly $49.6 million.60

- The Commission’s own orders have taken note of evidence submitted regarding a nearly 30% increase in costs for a MISO wind energy project from self-funding.61

Many of the PJM TOs own transmission in other regions, and many Interconnection Customers work (and finance projects) in multiple regions. Accordingly, Joint Protestors submit that the relative financing costs in PJM and in other regions (such as NYISO and MISO) for which the Commission has accepted evidence in the past are highly comparable, and the Commission should accept the evidence above as indicative of the cost increases which would occur under the Proposed Revisions. This increase in costs to Interconnection Customers would come, as the Commission previously noted in MISO, without any increase in service.62 Finally, Joint Protestors note that this evidence of cost increases is as-yet unrebutted in any past self-funding proceeding; as the rate proponent, the PJM TOs must make the affirmative case that their requested rate is not unjust, unreasonable, or unduly discriminatory or preferential despite these substantial costs to Interconnection Customers.

8. **PJM TOs assert that undue discrimination is mitigated by their proposed transparency measures, i.e. website posting, and the fact that the majority of PJM TOs have divested their generation assets. PJM TOs detail the information that will be posted to PJM’s**

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61 See Otter Tail Power Co., 153 FERC ¶ 61,352 at P 33 (2014) (“Border Winds compared the net present value of its own cost of capital to the net present value of Otter Tail's cost of capital . . . . Border Winds stated that, at Otter Tail's proposed fixed rate of 15.8 percent applied over a 20-year term, Border Winds' approximately $3.9 million in network upgrades would result in total costs of nearly $6.6 million. However, if Border Winds were applying its own cost of capital to the network upgrades under Option 2 funding, Border Winds stated that it would save over $1.8 million as compared to Otter Tail electing the initial funding option . . . . Therefore, the case record in Border Winds provided evidence that, under the unilateral election of the initial funding option by a transmission owner, a transmission owner's cost on capital could significantly increase costs to an interconnection customer relative to the interconnection customer's cost on capital under Option 2.”) (citing Motion to Intervene and Protest of Border Winds Energy, LLC, Docket No. ER14-2464-000, at 5 (Aug. 8, 2014)), case vacated and remanded on other grounds in Ameren Servs. Co. v. FERC.
62 See Ameren Servs. Co. v. FERC, 880 F.3d 571, 586 (Rogers, J., dissenting) (D.C. Cir. 2018) (noting the Commission’s rejection of self-funding because “adding such cost “with no corresponding increase in service,” the Commission observed, “shares similar characteristics” to a funding option that the Commission had eliminated [in E.ON] as unjust and unreasonable.”).
website on Network Upgrades they elect to fund, including but not limited to the cost of the upgrade and whether the interconnection customer is an affiliate of the PJM TOs. PJM TOs state that they will consider developing criteria on how they choose to elect to fund certain Network Upgrades if the Proposed Revisions are accepted. Finally, PJM TOs explain that PJM’s project status website, which is where this information will be posted, will include all Network Upgrades so interested parties can determine which upgrades PJM TOs did not elect to fund.

a. What protections against the exercise of undue discrimination exist outside of PJM TOs’ commitment to provide transparency and to consider developing criteria for electing to fund certain Network Upgrades?

In short, there are no protections against the exercise of undue discrimination. The PJM TOs assert, with little explanation or supporting evidence, that their proposal raises no concerns regarding affiliate abuse or undue discrimination or preference. Initial Filing at 29. Their cursory explanation fails to acknowledge that a transmission owner’s decision to elect to fund Network Upgrades under their proposal will result in cost increases for the generator in question that will cause disparate treatment among generators and put the subject generator at a competitive disadvantage in the PJM markets. The PJM TOs’ summary reliance on prior Commission precedent and on the generic process they will use to provide “transparency” of Network Upgrade funding decisions fails to demonstrate that Interconnection Customers will be protected from undue discrimination or preference as § 205 requires.

The risk that PJM TOs’ election to fund Network Upgrades could discriminate against one generator (and result in undue preference for a competing generator) is not abstract. All generation within PJM should be viewed as similarly situated for the purposes of this proceeding. Generation developers in PJM compete to sell their output at market-based rates, and the costs they incur to

63 Initial Filing at 29.
fund upgrades factors into the rates they can offer in the market—the higher the interconnection costs, the higher their rates, and the less competitive they are.

As mentioned above, a simple hypothetical again shows the disparate treatment among similarly situated generators that results. Consider a situation in which two developers propose identical projects, with developer A connecting to transmission owner Y and developer B connecting to transmission owner Z. Transmission owner Y elects to fund the necessary Network Upgrades to connect developer A, while developer B funds its own interconnection under the Existing Funding Approach. The result is that the total interconnection cost to developer B will be less than developer A. This provides developer B with a competitive advantage vis-à-vis developer A, for reasons that developer A cannot control. This disparate treatment of similarly situated transmission customers is unduly discriminatory.65

This disparate treatment could also be used by a transmission owner to favor its own generation or the generation of an affiliate by driving independent generation out of the market. Where a competitor of a TO’s owned or affiliated generation seeks to interconnect, a transmission owner could, under the PJM TOs’ proposal, freely opt to fund the Network Upgrades and increase that competing generation’s total interconnection costs and rates. If the cost is too high, the independent generation may withdraw from the queue, leaving an open path for the PJM TOs’ unregulated affiliate or the PJM TO itself fill the need. Thus, the PJM TOs will have submitted a proposal that will give them preference.

65 16 U.S.C. § 824d(b) (“[No public utility may] make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage [nor] maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.”); Dynegy Midwest Generation, Inc. v. FERC, 633 F.3d 1122, 1127 (Feb. 11, 2011) (defining undue discrimination as “creat[ing] arbitrary differences in the competitive position of [different] generators.”); St. Michaels Municipal Utils. Comm’n v. FPC, 377 F.2d 912 (4th Cir. 1967) (“[D]ifferences in rates are justified when they are predicated upon differences in facts – cost of service or otherwise – and where there exists a difference in rates which is attacked as illegally discriminatory, judicial inquiry devolves on the question of whether the record exhibits factual differences to justify classifications among customers and differences among the rates charged them.”).
Chairman Glick and Commissioner Clements recently highlighted the concern that a transmission owner unilateral option to fund Network Upgrades can lead to undue discrimination or preference, and that the Commission’s MISO orders – which the PJM TOs rely on heavily – are unsound. The PJM TOs briefly acknowledge these concerns but claim that they are somehow irrelevant in the PJM region. They rely almost exclusively on the Commission’s prior approval of MISO’s transmission owner self-funding proposal as binding precedent, stating that “[w]hile concerns have been raised” regarding the potential for discrimination or affiliate abuse in that region, such concerns do not exist within PJM because “many PJM Transmission Owners have already divested their generation assets.” But as this statement readily admits, not all PJM TOs have divested their generation assets. Several large PJM TOs still directly own generation assets, and many PJM TOs have unregulated affiliates that compete in the market (or could file to compete in the market). These PJM TOs would all have an incentive to engage in discriminatory application of the proposed transmission owner option to elect to fund Network Upgrades as a tool

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66 See Midcontinent Independent System Operator, Inc, 174 FERC ¶ 61,084 (2021) (Chairman Glick, Concurring, at ¶ 1 states “that giving transmission owners the discretion to unilaterally choose whether to self-fund network upgrades constructed on behalf of affiliated and non-affiliated interconnection customers may be unjust and unreasonable and unduly discriminatory or preferential.”; Comm’r Clements, Concurring, at ¶ 1 states “The Commission’s …orders adopting the current rules do not adequately address the justifiable concern that those rules create an opportunity for generation-owning transmission owners to unduly discriminate between assets in which they have an ownership interest, and assets for which they do not have such an interest. While this topic has been the subject of litigation before this Commission and the courts for several years, I believe we have more work to do.”).

67 Initial Filing at 29 (emphasis added).


to increase the costs assigned to competitors to their owned or affiliated generation assets. PJM TOs’ filing fails to address this potential for undue discrimination or preference. The Commission recognized this scenario in Order No. 2003-A:

We disagree that it is unduly discriminatory to allow an independent Transmission Provider to propose innovative cost recovery methods, including participant funding, while requiring a non-independent Transmission Provider to continue to use more traditional pricing required by Order No. 2003 for new interconnections. This different treatment is fair because the two types of Transmission Providers are not similarly situated. As we have explained, when implemented by an independent Transmission Provider which does not have an incentive to discourage new generation by competitors, new cost recovery methods including participant funding can yield efficient competitive results. However, because of their inherent subjectivity, new approaches such as participant funding [or, here, TO Self-Funding] could allow a non-independent Transmission Provider to propose methods that frustrate the development of new generating facilities that will compete with its own [or its unregulated affiliates].

In short, the PJM TO Self-Funding proposal clearly relies upon the “inherent subjectivity” that the Commission rejected in Order No. 2003-A, precisely because the PJM TOs have sole discretion. PJM is not involved whatsoever in the decision to apply the funding mechanism and associated cost increases. The decision to apply Self-Funding is chosen solely by the non-independent PJM TO. The Commission stated in Order No. 2003 that it “would find any policy that creates opportunities for such discriminatory behavior to be unacceptable;” here, such opportunities would unquestionably be present if the Initial Filing were approved.

More broadly, PJM TOs claim, without explanation, that the Commission should approve their proposal because they are “similarly situated to the transmission owners in MISO,” where the Commission approved a similar proposal. This claim fails for several reasons. The undue discrimination clause of the FPA is not applied by comparing one public utility (a PJM TO) to

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70 Order No. 2003-A at P 691.
71 See Order No. 2003 at P 696.
72 Initial Filing at 29.
another public utility (a MISO TO). These utilities are in different regions, operating under different market rules, and receive different Commission-approved ROEs. The “similarly situated” standard clause is applied to ensure that a public utility does not impose an undue preference on similarly situated customers. PJM TOs cannot simply point to the Commission’s decision in MISO (which is currently pending on appeal before the United States Court of Appeals for the D.C. Circuit), and state that they are “not aware” of any FPA § 206 complaints alleging discrimination in MISO. This does not serve to support the PJM TO proposal here, or explain why that proposal does not create undue discrimination or preference concerns. The PJM TOs must support their own case here under § 205, and they have not done so.

Perhaps recognizing that these claims do not address the real potential for undue discrimination or preference in their proposal, PJM TOs contend that their “transparent process to govern the option to fund Network Upgrades” would somehow serve to mitigate affiliate abuse and discrimination concerns. But they identify no actual Tariff provisions or procedural mechanisms that apply to the transmission owner option to fund and would limit or condition that option in situations where discrimination or undue preference concerns could arise. Indeed, an incentive to raise the cost of Network Upgrades for all interconnection customers with an intent to force independent generation out of the market is not overt behavior that can be identified or constrained by PJM through a Tariff provision. That is why the Commission has stated the mere “opportunity” for such a result is reason enough to reject such a variation from the Order No. 2003 baseline. Nonetheless, PJM TOs suggest that PJM’s generic “involvement in the interconnection process,” including its coordination of the planning process and studies, status as a party to study agreements, and its involvement in “administering the [Network Upgrade Funding Agreement],”

73 Id.
74 Id.
provides sufficient protection and independent oversight.\textsuperscript{75} While PJM’s involvement in these processes is important, it would not give PJM any authority to “govern” a transmission owner’s option to elect to fund Network Upgrades; the transmission owner would have the sole discretion to elect this option, and its election would occur before many of the steps of the interconnection process take place and before the Network Upgrade Funding Agreement is administered by PJM. Even if PJM’s independent oversight of these processes were to reveal discriminatory or preferential conduct, there are no Tariff provisions detailing what PJM would be obligated to do to mitigate or prevent that conduct (and PJM TOs provide no explanation). Accordingly, those processes and PJM’s involvement in them have not been shown to provide any real protection against discriminatory or abusive use of transmission owner self-funding.

PJM TOs further assert that affiliate abuse and discrimination concerns are mitigated by certain “transparency” provisions, such as the posting of a “non-binding statement of general intent on the PJM website of how each TO plans to treat Network Upgrades on its system” and the requirement that a transmission owner “provide its binding intent to fund each specific Network Upgrade prior to the completion of the Facilities Study.”\textsuperscript{76} Transparency is always welcome, but PJM TOs fail to explain how posting their “general intent”, or providing binding intent of their decision actually prevents discriminatory or preferential outcomes. Although such intent might ensure that a single PJM TO applies a uniform application of Self-Funding, that intent does not address the undue discrimination that would result when independent generation is driven from the marketplace because of increased costs for Network Upgrades, opening a path for a PJM TO or its affiliates to supply electricity without competition.

\textit{b. Please explain how the Commission or an interested party, i.e. an interconnection customer, could use this information to understand whether a PJM TO is exercising}
the option to initially fund Network Upgrades in an unduly discriminatory manner?

This question is addressed to PJM TOs. Joint Protestors will respond as appropriate in their reply comments.

c. Under the PJM TOs’ proposal, how would the Commission or an interested party be able to determine the facts and circumstances behind why a PJM TO exercised the option to initially fund Network Upgrades, and whether the PJM TO exercised this option differently among similarly situated interconnection customers?

This question requires information available only to the PJM TOs. Joint Protestors will respond as appropriate in their reply comments.

d. Please explain what percentage of interconnection requests in the interconnection queue have been submitted by transmission owners building in their own service territory, including via affiliates.

This question requires information available only to the PJM TOs. Joint Protestors will respond as appropriate in their reply comments.

II. CONCLUSION

As explained herein, the PJM TOs’ Proposed Revisions lack the evidence required under Section 205 of the FPA. The Commission’s questions make clear that the proposal should be rejected. Joint Protestors respectfully urge the Commission to reject the Proposed Revisions for the reasons detailed above.
Respectfully submitted,

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Dated: January 13, 2022
CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. § 385.2010 upon each party designated on the official service lists in this proceeding by email.

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