

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

PJM Interconnection, L.L.C.

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Docket No. ER22-2110-000

**COMMENTS OF PUBLIC INTEREST ORGANIZATIONS**

Pursuant to Rules 210 and 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),<sup>1</sup> Sierra Club, Sustainable FERC Project, and Natural Resources Defense Council (jointly, “Public Interest Organizations” or “PIOs”) hereby submit these comments in response to PJM Interconnection, L.L.C.’s (“PJM”) June 14, 2022 Tariff Revisions for Interconnection Process Reform, Request for Commission Action by October 3, 2022, and Request for 30-day Comment Period (“Tariff Revisions”) revising PJM’s tariff with regard to its generation interconnection queue processes.<sup>2</sup>

**I. Introduction**

PJM’s existing first-come, first-serve generation interconnection queue has proven insufficient to manage the increasing number of projects that wish to interconnect to the PJM system.<sup>3</sup> The number of generation projects seeking to interconnect to PJM’s system has gone from 375 in 2017 to 1,352 in 2021.<sup>4</sup> At the same time, as many as 80 percent of initial queue applicants drop out of the process at some point.<sup>5</sup> Because PJM operates a sequential first-come, first-serve queue, when a project drops out the queue, PJM must re-study lower-queued projects

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<sup>1</sup> 18 C.F.R. §§ 385.210, 211 (2020).

<sup>2</sup> 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 (June 14, 2022) (“Tariff Revisions”).

<sup>3</sup> Tariff Revisions Transmittal Letter to Tariff Revisions (“Transmittal Letter”) at 4.

<sup>4</sup> *Id.* at 5, Figure 2.

<sup>5</sup> *Id.* at 7.

to identify changes caused by the exiting project. This contributes to extensive delays in the interconnection process.<sup>6</sup> In a separate proceeding, the Commission has preliminarily found that this situation has rendered first-come, first-serve interconnection queues unjust and unreasonable.<sup>7</sup>

PJM's proposal to move from a first-come, first-serve queue to a first-ready, first-served queue will help fix some of the PJM interconnection queue problems and get projects through the queue and in-service more quickly. We agree that in this respect PJM's proposed tariff revisions are just and reasonable and an improvement on current process. However, portions of PJM's current interconnection tariff may be unjust, unreasonable, and unduly discriminatory or preferential. Many of those aspects are under investigation by FERC in the Interconnection NOPR. Due to the scope of the changes PJM has proposed, PJM has submitted them as entirely new Tariff sections.<sup>8</sup> Those new sections in many places restate existing provisions that the Interconnection NOPR suggests may be unjust, unreasonable, and unduly discriminatory or preferential.

This puts FERC in the awkward position of being asked to rule that a Section 205 filing is just and reasonable at the same time it investigates if portions of that filing are unjust or unreasonable through a rulemaking. PIOs support PJM's Tariff Revisions and do not wish to introduce delay. However, it is essential that FERC action in this docket does not prejudice the outcomes of the Interconnection NOPR.<sup>9</sup>

In addition to the above procedural matter, PIOs request the Commission direct that PJM change the requirement that Project Developers provide proof of 100 percent site control to 90

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<sup>6</sup> *Id.* at 22-23.

<sup>7</sup> *Improvements to Generator Interconnection Procedures and Agreements*, 179 FERC ¶ 61,194 (June 2022) ("Interconnection NOPR") at 22.

<sup>8</sup> *See*, Tariff Revisions Transmittal Letter at 29 and fn30.

<sup>9</sup> If the Commission finds the conflict between the Tariff Revisions and the Transmission NOPR irreconcilable, it may look to whether a one-day suspension and subsequent hearing is warranted pursuant to 16 U.S.C. § 824d(e).

percent site control, and to add language allowing flexibility when site control cannot be demonstrated because of regulatory requirements or obligations. Requiring PJM to make these changes is a minor modification that does not raise any of the concerns with Commission changes to Section 205 filings identified by courts.<sup>10</sup>

## II. Comments

### a. **While the new process in PJM’s Tariff Revisions is just and reasonable, other aspects of its interconnection processes may remain unjust and unreasonable.**

Subject to the points discussed in these comments below, PIOs believe that PJM’s Tariff Revisions are just and reasonable. PJM’s proposed changes to its interconnection processes are designed to improve the interconnection queue and get more projects interconnected faster. However, PIOs’ support for these Tariff Revisions should not be confused for an assertion that adoption of these changes will make all of PJM’s interconnection processes just and reasonable. Significant changes to PJM’s interconnection queue are required to bring PJM’s interconnection processes into compliance with the Federal Power Act’s (“FPA”) requirements for just and reasonable rates and removal of undue discrimination.

The Commission has already identified many aspects of RTO/ISO interconnection processes that are unjust and unreasonable and unduly discriminatory. In its notice of proposed rulemaking, “Improvements to Generator Interconnection Procedures and Agreements,” the Commission outlined a series of problems with existing RTO/ISO interconnection processes that are in violation of the FPA. While some of these identified problems are addressed in PJM’s Tariff Revisions, many are not. For example, PJM’s Tariff Revisions do not fix the lack of information provided to prospective interconnection customers that leads to speculative projects, do not clarify

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<sup>10</sup> See, e.g., *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108, 110 (D.C. Cir. 2017); *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1579 (D.C. Cir. 1993).

the role that grid-enhancing technologies should play in the interconnection process, and do not provide penalties should PJM fail to complete studies in a timely manner. All those important reforms are part of the Commission's Interconnection NOPR. There are likely other aspects of PJM and other RTO/ISO interconnection processes that are not just and reasonable and/or lead to undue discrimination. These include cost allocation concerns and other problems with existing interconnection processes that parties will likely raise in the Interconnection NOPR comment period.

If the Commission accepts PJM's Tariff Revisions, it should clarify that the changes to PJM's interconnection processes do not necessarily make the entirety of PJM's interconnection processes just and reasonable, especially with regard to Commission's pending Interconnection NOPR.

**b. The lack of firm deadlines for its transition cycles and new rules may make the Tariff Revisions unjust and unreasonable.**

PJM correctly identifies the need to improve the time it takes for projects to get through its interconnection queue. As of April 2022, PJM had an interconnection queue backlog of 1,857 projects.<sup>11</sup> Some of those backlogged projects go back as far as 2016.<sup>12</sup> PJM proposes a reasonable method of working through this backlog by combining a fast lane process for projects with low risk of grid disruption and two transition cycles for remaining backlogged projects that rely on the new group study method to reduce the time needed to evaluate projects.<sup>13</sup>

PIOs recognize that this transition will take time and that a certain amount of patience is required while PJM clears out the queue. However, predictability is important when planning large projects, for clean energy buyers, and especially for states' ability to design successful clean energy

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<sup>11</sup> Tariff Revisions Transmittal Letter at 24, Figure 8.

<sup>12</sup> *Id.* at page 9, Figure and page 24, Figure 8.

<sup>13</sup> Tariff Revisions Attachment C, Connell Affidavit at PP 25-27.

programs. The Tariff Revisions provide very little guidance for how long this transition will take. While PJM has provided a rough idea of how it expects the process to unfold, it has not committed itself to any specific timelines nor provided any analysis to indicate when and why it expects the transition period to be completed by a certain date.

PJM indexes its proposed sequence and timing for its transition period based on a Transition Date, which it defines as the later of the date that the Commission approves its Tariff Revisions or “the date by which all AD2 and prior queue window Interconnection Service Agreements or wholesale market participation agreements have been executed or filed unexecuted.”<sup>14</sup> PJM does not suggest any deadline for its Transition Date and does not commit itself to a specific deadline for completing the transition period following the Transition Date. Instead, the Tariff Revisions direct PJM to use “Reasonable Efforts” to meet aspirational schedules.<sup>15</sup>

The Commission has already recognized the problems that ambiguous study timelines present challenges for projects entering the generation interconnection queue. In its recent Interconnection NOPR, the Commission found that the *pro forma* Large Generator Interconnection Procedures’ failure to require transmission providers to meet deadlines for conducting interconnection studies “compound[s]” the problems with interconnection queues.<sup>16</sup> The Interconnection NOPR further states “we preliminary find that use of the reasonable efforts standard results in rates that are unjust and unreasonable,” in direct tension with PJM’s request that FERC approve a tariff relying on that standard.<sup>17</sup>

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<sup>14</sup> Tariff Revisions Transmittal Letter, Appendix 1 at 14-15. AD2 projects date as far back as October 1, 2017. *See* Transmittal Letter at 9, Figure 5.

<sup>15</sup> *Tariff Revisions Transmittal Letter* at 48, 51, 55.

<sup>16</sup> Interconnection NOPR at P 28.

<sup>17</sup> *Id.* at 167.

Without any proposed deadlines, PJM leaves project developers, energy buyers, and states in the dark. This may lead to higher project costs that will be passed on to customers and to continued reliance on highly polluting and often high-cost fossil fuel generators that might otherwise retire if forced to compete with the renewable and storage generation assets that dominate PJM's queue. Delayed and unpredictable interconnection processes also threaten reliability as new resources are unable to begin operation to replace retiring, uneconomic generation.

The lack of clarity on timing of the transition also creates problems with PJM's proposed requirements for increased site control. PJM's Tariff Revisions will require project developers to maintain site control throughout the interconnection study process.<sup>18</sup> By failing to commit to meaningful deadlines for its Transition Date or the length of the transition period, PJM forces project developers to take on increased risk in acquiring site control of properties for an indeterminate amount of time. This could jeopardize otherwise cost-effective and competitive projects.

**c. The material modification criteria in the Tariff Revisions may be unjust and unreasonable.**

The Tariff Revisions propose that modifying the fuel type of a project "in any way," including addition of storage, is not allowed, and will result in the project being removed from the queue.<sup>19</sup> The Interconnection NOPR states that such rules are a "significant barrier," and preliminary finds that barrier unjust and unreasonable.<sup>20</sup>

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<sup>18</sup> Tariff Revisions Attachment D, Shoemaker Affidavit at P 6.

<sup>19</sup> Tariff Revisions Transmittal Letter at 38-39, and Proposed Tariff, Part VII, Subpart D section 309.B.3

<sup>20</sup> Interconnection NOPR at 254.

**d. The Commission should require PJM to change its requirement for site control from 100 percent to no more than 90 percent and allow flexibility in certain circumstances.**

PJM proposes that project developers “must demonstrate Site Control over one or more Sites for the purposes of constructing a Generating Facility or Merchant Transmission Facility through a deed, lease, or option for at least a one-year term beginning from the Transition Date.”<sup>21</sup> Project developers must continue to show this site control throughout the queue process as well as provide evidence of having obtained air and water permits where applicable.<sup>22</sup> PJM’s Tariff Revisions require that Project Developers show control over “100 percent of the Generating Facility including the location of the high-voltage side of the Generating Facility’s main power transformer(s).”<sup>23</sup>

PIOs agree that a demonstration of site control by project developers will help reduce the number of speculative projects in the interconnection queue. However, requiring project developers to demonstrate 100 percent control risks keeping out projects that are ready to enter the queue but have not secured the last bits of site control. PIOs propose that the PJM amend its site control requirement to require no more than 90 percent site control for a project to move forward in the interconnection queue.

Leaving some flexibility on site control is especially important for PJM’s proposal that project developers continue to prove site control at each new stage of the study process. PJM has not committed itself to any firm deadlines by which to complete study milestones. It is possible that a project developer could secure 100 percent site control for study phase 1 through one-year leases, only to find that PJM fails to complete that phase within one year. Should PJM seek to

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<sup>21</sup> Tariff Revisions Attachment D Shoemaker Affidavit at P 6.

<sup>22</sup> *Id.* at P 16.

<sup>23</sup> Tariff Revisions Transmittal Letter at 45-46.

move forward with study phase 2 after the initial one-year leases have expired but before the Project Developer has secured the required 100 percent site control through renewed leases, an otherwise viable project might be forced to withdraw from the queue. Granting some flexibility on the site control issue will help ensure that viable projects remain in the queue without encouraging speculative projects to move forward.

The Commission has previously addressed this issue in a MISO interconnection docket.<sup>24</sup> There, the Commission conditioned acceptance of MISO's filing on a reduction of site control requirements from 100 percent to 75 percent. In doing so, the Commission agreed that "obtaining 100 percent site control may be challenging for a developer that must control numerous small parcels of land" such as for a wind project, and noted that "it is common for the locations of individual wind towers to continue changing long after ultimate site control is no longer in doubt."<sup>25</sup> PJM presents no reason why identical concerns do not exist in their footprint. We also note that PJM allows reduction in a project's MFO at several points in the interconnection process, meaning that a wind or solar developer who obtains nearly but not entirely 100 percent of the needed land should be able to adopt by slightly reducing their projects output. Finally, in the MISO docket, FERC, found "it would be unjust and unreasonable to require site control at a stage of the interconnection process that would be in conflict with state easement requirements" and accepted a modification to the proposed tariff that allowed for flexibility when site control was blocked by regulatory requirements.<sup>26</sup>

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<sup>24</sup> *Order Accepting Tariff Revisions Subject to Condition*, 158 FERC ¶ 61,003 (Jan. 2017) at 90-99.

<sup>25</sup> *Id.* at 99, 94.

<sup>26</sup> *Id.* at 99, 95.



Consistent with its earlier rulings, the Commission should require PJM to amend its filing to require project developers to demonstrate site control of no more than 90 percent, and to insert language similar to MISO's regarding situations where site control cannot be demonstrated due to regulatory issues.

**e. The Tariff Revisions fail to address the lack of information available to prospective developers, potentially undermining its own reforms.**

The Tariff Revisions assign the lion's share of responsibility for PJM's queue backlog to the presence of "speculative" projects.<sup>27</sup> However, PJM does not attempt to identify the root cause of these projects. PIO's submit that speculation is project developers' rational response to the uncertainty inherent in the current interconnection process. As the Commission states:

We are concerned that the lack of transparency for prospective interconnection customers to obtain information about potential interconnection costs prior to submitting an interconnection request is problematic. Without this information, it is difficult for interconnection customers to assess the viability of a specific proposed generating facility. Subsequently, interconnection customers submit multiple speculative interconnection requests in an attempt to obtain information through the system impact study process about the costs associated with various project configurations.<sup>28</sup>

Rather than address this lack of transparency, the Tariff Revisions propose to limit speculation through a series of forfeitable deposits.<sup>29</sup> While such an approach may reduce speculation simply by virtue of increased costs, it does nothing to provide developers with the information needed to reduce uncertainty when entering the queue. This may be unjust, unreasonable, or unduly discriminatory, as it leaves developers with no choice but to risk substantial penalties as the cost of gaining information about the suitability of a potential project site.

### **III. Conclusion**

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<sup>27</sup> See, e.g., Tariff Revisions Transmittal Letter at 6-9.

<sup>28</sup> Interconnection NOPR at 40.

<sup>29</sup> See, e.g., Tariff Revisions Transmittal Letter at 1.

PIOs support PJM's proposed Tariff Revisions to improve its interconnection queue. While the transition phase will take time, we believe that the benefits to switching to a first ready, first served model will significantly improve the interconnection queue and allow PJM to work through its significant backlog of clean energy projects. However, the Tariff Revisions suffer from many of the flaws in current interconnection procedures identified as potentially unjust, unreasonable, or unduly discriminatory in the Interconnection NOPR.

PIOs are concerned that a blanket finding that the Tariff Revisions are just and reasonable, especially issued after the publication of the Interconnection NOPR, may serve to prejudice that rulemaking or expose it to charges of arbitrary reversal. However, PIOs agree that the Tariff Revisions are important and beneficial changes to PJM's interconnection process, and we have no desire to introduce delay. PIOs thus respectfully request that the Commission:

1. State that by approving PJM's Tariff Revisions it is not passing judgment on whether other aspects of PJM's interconnection processes are just and reasonable and not unduly discriminatory and that any decision on these Tariff Revisions do not bind the Commission's actions with respect to its Interconnection NOPR;
2. Require PJM to amend its filing to require project developers to demonstrate site control of no more than 90 percent and to give flexibility when regulatory issues interfere with site control.

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Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document has been served on this day upon each person designated on the official service list compiled by the Secretary for this proceeding.

Dated at Chicago, Illinois, this 14<sup>th</sup> day of July, 2022.

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