

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

PJM Interconnection, L.L.C.)	Docket No.	ER22-703-000
)		ER22-703-001
)		

**COMMENTS OF THE
ORGANIZATION OF PJM STATES, INC.**

Pursuant to Rule 212 of the Federal Energy Regulatory Commission’s (“FERC’s” or the “Commission’s”) Rules of Practice and Procedure, the Organization of PJM States, Inc. (“OPSI”),¹ respectfully submits the following comments regarding the proposed changes to the PJM Interconnection, L.L.C. (“PJM”) Open Access Transmission Tariff (“Tariff”) filed on December 21, 2021² and amended on December 30, 2021³ (together, “PJM Filing”), pursuant to section 205 of the Federal Power Act (“FPA”)⁴ and part 35 of the Commission’s regulations.⁵ The PJM Filing proposes to revise the calculation of the Financial Transmission Right (“FTR”) Credit Requirement, which sets the collateral in order to participate in PJM’s FTR market. OPSI requests the Commission find the PJM Filing deficient.

I. COMMENTS

¹ Approved unanimously by the OPSI Board of Directors on January 13, 2022.

² *PJM Interconnection, L.L.C., Revisions to PJM’s FTR Credit Requirement and Request for 28-Day Comment Period* (December 21, 2021) (“December 21 Filing”).

³ *PJM Interconnection, L.L.C., Amendment to Revisions to PJM’s FTR Credit Requirement*, (PJM filed to amend its initial filing since it “inadvertently included two errors to the [proposed] Tariff language” PJM’s amended filing did not offer any changes to the supporting documents included in the initial filing.) (December 30, 2021).

⁴ 16 U.S.C. § 824d.

⁵ 18 C.F.R. part 35.

OPSI appreciates PJM’s efforts to instill confidence in its financial markets since the GreenHat Energy, LLC (“GreenHat”) default of June 21, 2018. The PJM Board contracted with an independent consultant providing numerous recommendations for improvement⁶ that have led to the hiring of a Chief Risk Officer and the most recent PJM stakeholder efforts to reform FTR market rules. These efforts have culminated in a proposed suite of changes, including those aimed at reducing default risk compared to the status quo. Included in the PJM Filing is a provision to calculate Initial Margin (“IM”) at a level that meets a 97% Confidence Interval (“CI”) – significantly below the 99% minimum established for swaps⁷ by the Commodity Futures Trading Commission (“CFTC”).⁸ The 99% CI threshold was equally embodied in the policy framework developed by the Basel Committee on Banking Supervision (“BCBS”) and the Board of the International Organization of Securities Commissions (“IOSCO”) upon the urging of the Group of Twenty (“G20”) in 2011 to develop consistent global standards.⁹

The CFTC has exempted FTRs from the provisions of the Commodity Exchange Act¹⁰ and PJM’s FTR market does not fall under the jurisdiction of similar international regulatory agencies. Yet, it is incumbent upon the Commission as the regulator of this market to protect integrated utilities and Load Serving Entities (“LSEs”) from uncovered losses that, either directly

⁶ *Report of the Independent Consultants on the GreenHat Default*, Independent Consultants R. Anderson and N. Wolkoff, Counsel for the Special Committee: A. P. Helfer III, Esq., Schnader Harrison Segal & Lewis LLP (March 26, 2019).

⁷ *Impacts of Potential Financial Markets Reform Legislation on Organized Wholesale Electricity Markets*, Testimony of V. P. Duane, Vice President & General Counsel PJM Interconnection, L.L.C. before the United States Senate Committee on Energy and Natural Resources, at 6 (“The FTR is a forward right or obligation with some attributes seen in swap contracts and other attributes seen in futures contracts.”) (March 9, 2010).

⁸ *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, Final Rule*, CFTC, 17 CFR Parts 23 and 140, Federal Register Vol. 81, No. 3 (January 6, 2016).

⁹ *Margin Requirements for Non-Centrally Cleared Derivatives*, BCBS and IOSCO (September 2013).

¹⁰ *Final Order in Response to a Petition from Certain Independent System operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or Public Utility Commission of Texas from Certain Provisions of the Commodity Exchange Act Pursuant to Authority Provided in the Act*, CFTC, Federal Register Vol. 78, No. 63 (April 2, 2013).

or indirectly, are eventually passed along to electric ratepayers. The PJM Filing does not demonstrate how the selected 97% CI serves in addressing any potential impact on the liquidity resources of FTR Market participants compared with a 99% CI. Moreover, it certainly does not provide any detail regarding such impacts vis-à-vis the need to protect non-participants and ultimately, electric ratepayers from the consequences of default risk exposure. Furthermore, the PJM Filing does not provide the pertinent information necessary for the Commission to reasonably examine these factors. Rather, PJM simply proposes to “move the Tariff’s FTR credit policy *toward* credit and collateral best practices in the energy commodity and financial derivatives industry”¹¹ and “consider the need for further changes.”¹² Short of indicating that consideration of such changes would rely on “additional data and experience gained from implementation of the present proposal, appropriate consultation with stakeholder [and] ... a section 205 filing,”¹³ the PJM Filing does not provide any plan, direction or timetable for, nor does it commit to reaching a desired end state that actually aligns the collateral requirement with the 99% CI used in other markets or provide any metrics that would guide it along in that direction.

Timely adoption of a 99% CI is not only critical but also predicates support for an interim 97% CI in an affidavit PJM provides in justifying its proposed Tariff changes.¹⁴ As Affiants Wolkoff and Anderson indicate:

PJM has told us they are committed to implementing a 99% Confidence Interval in the future...PJM also recognizes that it is not in the public interest for the FTR market to be exposed to another default resulting in losses to PJM members because

¹¹ December 21 Filing at 5 (emphasis added).

¹² Affidavit of Nigeria Bloczynski on Behalf of PJM Interconnection, L.L.C. at 15.

¹³ *Id.*

¹⁴ Affidavit of Neal Wolkoff and Robert Anderson on Behalf of PJM Interconnection, L.L.C., December 21, 2021 at 29 (“Our recommendation of the interim 97% Confidence Interval at this time is with the clear understanding that PJM will implement a 99% Confidence Interval within a reasonable period of time.”).

of an extended delay in moving the FTR Credit Requirements to a 99% Confidence Interval.

We are supportive of using a 97% Confidence Interval as an appropriate practice at this time. We see this as an initial step toward industry best practices while avoiding market disruptions that could be caused by the transition from the old collateral system to the new Initial Margin regime, with a 99% Confidence Interval, in one step. However...we concur with PJM's expressed and appropriate intent to move diligently and on a reasonable timeframe to a 99% Confidence Interval.¹⁵

Affiants Wolkoff and Anderson do not explain why an immediate adoption of 99% would cause market disruptions significantly different than with a leap to a 97% CI. The Affiants are also silent on how exactly they would characterize "diligently and in a reasonable timeframe" in moving towards a 99% CI. They do, however, state that "[g]iven the lengthy period between auctions, PJM may have to wait one or two months to have sufficient price data to see that its model is not effectively capturing price risk as expected at the Confidence Interval in effect."¹⁶ This observation suggests that a "reasonable timeframe" would be significantly shorter than PJM's above mentioned prospect of consulting stakeholders anew and filing for Commission approval under FPA section 205. This is especially of concern given Affiants Wolkoff and Anderson aptly characterize the adverse implications of maintaining a 97% CI, stating:

By design, a 97% CI in the FTR Credit Requirements will allow for potentially more inadequate margin scenarios which may result in more uncovered losses to the *PJM markets as a whole* and to the PJM members, including those that do not actively participate in the FTR markets. The model-generated scenarios contemplate events captured in historical market data. Unfortunately, in the PJM markets that are inextricably tied to the physical power markets, the 3% tail which is uncovered may include an extreme weather event like a polar vortex or a Winter Storm Uri event which foreseeably could re-occur. Such extreme but foreseeable events can result in significant commodity derivatives market price swings, which may cause FTR market defaults, which may generate disproportionately large losses which PJM's members do not have the resources to bear. By missing 3% of

¹⁵ *Id.* at 20. OPSI notes that in stark contrast to PJM management's preference for a 99% CI, PJM's filed proposal is to *eventually* adopt a 99% CI. See December 21 Filing at 10, where PJM indicated it "advocated for [a] 99% [confidence interval]" to be a part of this proposal which seeks *immediate* approval by this Commission.

¹⁶ *Id.* at 24.

the outlying events of the past using a 97% CI when setting a protective Initial Margin level, the 97% CI choice knowingly exposes the FTR markets to foreseeable price moves that are not covered by the level of required Initial Margin. Even while the market proceeds without any defaults, the *PJM markets as a whole* and members of PJM (*including non-participants* in the FTR market) are effectively providing credit support to FTR market participants by *agreeing to backstop losses* resulting from a failure in FTR market margin policy.¹⁷

As articulated, default risk at a 97% CI can significantly impact PJM markets *as a whole* should the region experience a severe weather event. Even if extreme weather conditions do not materialize and defaults do not occur, ratepayers would *still* be indirectly underwriting the risk of FTR market participants with an Initial Margin at a 97% CI.

Even after characterizing the prospect for such catastrophic impacts and increased exposure to insufficient collateral,¹⁸ Affiants Wolkoff and Anderson endeavor to mollify the concern with minimizing collateral requirements over an interim period by suggesting that otherwise “[s]ome participants could be forced to reduce their participation and/or liquidate some positions in PJM’s FTR markets if the initial margin requirements exceed a market participant’s [*sic*] working capital available for margin purposes, and market disruptions could occur as a result.”¹⁹ The prospect of reduced participation would not be unexpected. As Affiants Wolkoff and Anderson point out, confidence intervals adopted by Derivatives Clearing Organizations (“DCOs”) and Other Market Risk Managers (e.g. ERCOT, Nodal and ICE), where many of PJM FTR Market participants may also trade, are 99% or higher.²⁰ It is logical that PJM’s Market Participants may gravitate to other markets if they can no longer offload their risk to non-participants and, indirectly, to ratepayers.

¹⁷ *Id.* at 22-23 (emphasis added).

¹⁸ *Id.* at 22 (“we find the higher [99%] CI reduce[s] by 36% the incidence of scenarios with uncovered liquidation losses.”).

¹⁹ *Id.* at 28.

²⁰ *Id.* at 11.

II. CONCLUSION

OPSI appreciates PJM's efforts to remedy the risks inherent in its FTR market that led to the GreenHat default and its commitment to seek to improve upon such remedies. PJM's management, PJM's independent experts, the CFTC, and other major DCOs and Market Risk Managers all use or have advocated for the use of a 99% confidence interval for FTRs or similar financial products. However, the PJM Filing does not provide sufficient detail as to how PJM plans to move towards implementing this universally accepted standard, or how long it would take it to do so, in the interest of protecting its markets as a whole and shielding non-participants in its FTR markets – particularly ratepayers – from default risk. Until such information is provided in a manner that allows the Commission to confirm the proposed collateral requirement is indeed just and reasonable, OPSI recommends the Commission find the filing deficient.

Respectfully Submitted,

/s/ Gregory V. Carmean

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Dated: January 14, 2022

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Gregory V. Carmean

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Dated at Newark, Delaware this January 14, 2022