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

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| PJM Interconnection, L.L.C. | ) | Docket No. | ER22-703-000 |
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# MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE ORGANIZATION OF PJM STATES, INC. IN OPPOSITION TO THE PJM INTERCONNECTION, L.L.C. REQUEST FOR REHEARING

## I. MOTION FOR LEAVE TO ANSWER

Pursuant to Rules 211, 212 and 213 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 212, 213, the Organization of PJM States, Inc. ("OPSI"),[1] respectfully submits this Motion for Leave to Answer and Answer in opposition to PJM Interconnection, L.L.C.'s ("PJM") Request for Rehearing filed on March 30, 2022 ("PJM Rehearing Request") in the above-captioned proceeding.[2] While the Commission's rules do not generally permit answers to requests for rehearing, the Commission allows such responses for good cause, including when an answer provides information that assists in the Commission's decision-making process or ensures a complete and accurate record in the proceeding.[3] With this brief answer, OPSI wishes to clarify the record and provide context that

[1] Unanimously approved by the OPSI Board of Directors on April 12, 2022.

[2] *Request of PJM Interconnection, L.L.C. for Rehearing*, ER22-703-002 and EL22-32-001, at 1–2 (March 30, 2022).

[3] *See Texas Eastern Transmission, LP and Algonquin Gas Transmission, LLC*, 141 FERC ¶ 61,043, at footnote 4 (2012) (admitting an answer to parties' rehearing requests since there will be no undue delay and may it provide information that assists in the Commission's decision making); *Tarpon Transmission Company*, 64 FERC ¶ 61,287, at 1 (1993) (finding good cause to accept an answer to a request for rehearing since it does not delay the proceeding and ensures a full and complete record); *Wrightsville Power Facility, L.L.C. v. Entergy Arkansas, Inc. Entergy Services, Inc. Entergy Arkansas, Inc. Entergy Gulf States, Inc.*, 102 FERC ¶ 61,212, at 4, 7 (2003) (finding good cause to accept an answer to a request for rehearing because it aids in the Commission's understanding and resolution of issues in the proceeding).

may assist the Commission in its decision-making process, thereby benefiting all parties.[4] Given the nature of these issues, OPSI's concerns are relevant to this proceeding.[5] This response also helps to clarify OPSI's position on these important issues.[6] Additionally, OPSI wishes to notify the Commission that PJM's Vice President and Chief Risk Officer, Nigeria Bloczynski, resigned from PJM on April 5, 2022.[7] In the PJM stakeholder process, the Chief Risk Officer recommended PJM adopt a 99% confidence interval for collateral requirements.[8] Therefore, good cause exists to grant this motion for leave to answer.[9]

## II. BACKGROUND

PJM requests that the Commission grant rehearing of its February 28, 2022 order in this docket, which rejected PJM's December 21, 2021 (subsequently amended on December 30, 2021) filing ("PJM Filing") consisting of proposed revisions to its Open Access Transmission Tariff ("OATT") regarding the calculation of Financial Transmission Right ("FTR") Credit Requirement, and instituted a separate Federal Power Act ("FPA") Section 206 investigation in Docket No. EL22-32-000 ("Section 206 Proceeding"). PJM argues that the Commission's February 28, 2022 order "err[ed] by disregarding nearly all of the substantial evidence PJM presented in support of the December Section 205 Filing."[10] In the alternative, PJM requests that if rehearing is not granted the Commission clarify that its February 28, 2022 order "does not

[4] *Independent Oil & Gas Association of West Virginia*, Docket No. RI74-188-003 (Dec. 21, 1983) (J. Nacy) (Unreported).
[5] *Buckeye Pipe Line Co., L.P.*, 45 FERC ¶ 61,046 (1988).
[6] *Natural Gas Pipeline Co. of America*, 52 FERC ¶ 61,219 (1990).
[7] *Bloczynski Resigns as PJM Chief Risk Officer*, RTO Insider (April 5, 2022), available at https://www.rtoinsider.com/articles/29899-bloczynski-resigns-pjm-chief-risk-officer.
[8] *See generally PJM Perspective on Main Motion and Initial Margin*, Presentation given at the October 14, 2021 PJM Special Risk Management Committee and October 20, 2021 PJM Members Committee meetings, Nigeria Bloczynski – Chief Risk Officer, available at: 20211020-item-01b-pjm-perspectives-on-main-motion-and-initial-margin.ashx.
[9] *Natural Gas Pipeline Co. of America*, 52 FERC ¶ 61,219 (1990).
[10] PJM Rehearing Request at 1.

foreclose any argument PJM may present in support of any or all of the rejected section 205 changes based on a new record in either the Section 206 Proceeding or a new FPA section 205 proceeding."[11] OPSI requests that the Commission reject PJM's Request for Rehearing.

## III. ANSWER

PJM asserts that the Commission erred by not considering the bulk of the evidence it presented in the PJM Filing, which proposed using an historical simulation ("HSIM") model with the confidence interval ("CI") for initial margining in FTR markets set at 97%.[12] PJM claims that the Commission improperly narrowed its consideration to two issues, an independent auditor's evaluation of the HSIM model's technical capability which used a 99% CI, and the PJM Filing's estimation that an HSIM model using the 97% CI would collect less collateral than the currently effective rules, leading the Commission to find that PJM has not demonstrated that it will collect a sufficient level of collateral under the proposed Tariff revisions to avoid possible default among the riskiest participants in the FTR Market.[13]

OPSI agrees with the Commission that PJM has not shown that the HSIM model at a 97% CI would operate in the same manner as a 99% CI, the level at which the independent auditor validated the model. Though PJM insisted back-testing analyses included in the validation did show that a 97% CI would provide the expected failure rate of 3%, the entire validation model was run using a 99% CI as the basis for the analysis, leaving the record short of what PJM claims is sufficient evidence to use a 97% CI instead.[14] Furthermore, OPSI agrees with the Commission that PJM has not shown that the HSIM model at a 97% CI would collect enough collateral to

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[11] *Id*. at 1–2.
[12] *Id*.
[13] *Id*.
[14] FERC February 28, 2022 order, ER22-703-001 and EL22-32-000, at 3–5.

sufficiently protect against default, despite PJM's parsing of the difference between portfolio risk and participant risk.[15].

In its February 28, 2022 order, the Commission notes that PJM's transmittal letter included an initial discussion titled "Limitations of the Current Approach,"[16] in which PJM acknowledged the extent to which its current Tariff provisions may have played a part in the GreenHat default and which led to PJM suggesting the current Tariff revisions to the FTR Credit provisions.[17] The Commission went on to reference PJM's transmittal letter emphasized its goal of implementing the specific recommendations from the GreenHat Report, but also stated its intent to "more broadly reflect[] a major step forward in advancing the overall recommendation to move the Tariff's FTR credit policy toward credit and collateral best practices in the energy commodity and financial derivatives industry …."[18] OPSI has previously stated that 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.[19] Though PJM's FTR market has been exempted from the provisions of the Commodity Exchange Act by the Commodity Futures Trading Commission ("CFTC"),[20] the best practices in the industry require a 99% confidence interval, including the CFTC's own minimum CI for swaps and the

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[15] FERC February 28, 2022 order, ER22-703-001 and EL22-32-000, at 14–15; PJM Rehearing Request at 6–9.

[16] *Id*. at 3, 15–16; PJM Transmittal Letter, 2–5 (December 21, 2021).

[17] FERC February 28, 2022 order, ER22-703-001 and EL22-32-000, at 3, 15.

[18] FERC February 28, 2022 order at 3; PJM Transmittal Letter at 5.

[19] OPSI Comments, ER22-703-001 and ER22-703-000, unpaginated page 5 (citing to *Affidavit of Neal Wolkoff and Robert Anderson on Behalf of PJM Interconnection, L.L.C.*, December 21, 2021 at 11) (January 14, 2021); *see also, 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 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); *see also, 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).

[20] *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).

policy framework developed by the Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions.[21] By its own admission, PJM's filing seeks to more closely align its FTR credit policy with those best practices, and Affiants Wolkoff and Anderson confirmed that they recommended an interim 97% CI "with the clear understanding that PJM will implement a 99% Confidence Interval within a reasonable period of time."[22]

However, PJM made no effort to define the reasonable amount of time before it would implement a 99% CI, as OPSI recommended in its November 10, 2021 letter to the PJM Board, or further address the process or metrics by which it would evaluate or plan for this eventual transition. For these reasons, the Commission was correct both in finding that PJM's proposed FTR Credit Revisions are unsupported by the record in this proceeding and in instituting a 206 proceeding to investigate whether PJM's existing FTR Credit Requirements are just and reasonable. Affiants Wolkoff and Anderson explained that the risks of maintaining a 97% CI would include the potential higher likelihood for inadequate margin scenarios which could 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 …", especially following an extreme weather event.[23] The level of default risk being borne by the ratepayers, who effectively backstop the FTR markets, in maintaining a 97% CI, without any meaningful path to 99% CI being shown, is too great to be approved on this record.

[21] *See* OPSI Comments, ER22-703-001 and ER22-703-000, unpaginated page 2 (this framework was created at the behest of the Group of Twenty in 2011 in order to set consistent global standards) (citing *Margin Requirements for Non-Centrally Cleared Derivatives*, BCBS and IOSCO (September 2013)).

[22] *Affidavit of Neal Wolkoff and Robert Anderson on Behalf of PJM Interconnection, L.L.C.*, December 21, 2021 at 29.

[23] OPSI Comments, ER22-703-001 and ER22-703-000, unpaginated pages 4–5 (citing to *Affidavit of Neal Wolkoff and Robert Anderson on Behalf of PJM Interconnection, L.L.C.*, December 21, 2021, at 11) (January 14, 2021).

## IV. CONCLUSION

OPSI continues to maintain that a 99% CI for FTRs is appropriate and necessary as the prevailing industry standard and should be adopted by PJM. The 99% CI was supported by PJM management, the independent experts hired by PJM, as well as the CFTC, DCOs, and other market risk managers. PJM did not present adequate evidence to support its continued insistence on a 97% CI, and the Commission was correct to reject the December filing and open a Section 206 investigation into the justness and reasonableness of PJM's current FTR Credit Requirement. As such, OPSI asks that the Commission reject PJM's request for rehearing.

Respectfully Submitted,

***/s/ Gregory V. Carmean***
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Dated: April 12, 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 April 12, 2022.