

ORGANIZATION OF PJM STATES, INC.

Members:

Delaware Public Service Commission
District of Columbia Public Service Commission
Illinois Commerce Commission
Indiana Utility Regulatory Commission
Kentucky Public Service Commission
Maryland Public Service Commission
Michigan Public Service Commission
New Jersey Board of Public Utilities
North Carolina Utilities Commission
Public Utilities Commission of Ohio
Pennsylvania Public Utility Commission
Tennessee Regulatory Authority
Virginia State Corporation Commission
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Executive Committee Members:

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Laura Chappelle, Vice President
Mark David Goss, Secretary
Allen M Freifeld, Treasurer
Agnes A. Yates

December 5, 2005

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(by Electronic Filing)

Re: **PJM Interconnection, L.L.C.; Docket Nos. ER06-78-000; Answer of the Organization of PJM States, Inc.**

Dear Ms. Salas:

Please accept for filing in the above-referenced matter the electronically filed Answer of the Organization of PJM States, Inc. Service has been made upon the service list as evidenced by the attached certificate of service.

Thank you for your attention to this matter. If you have any questions in reference to this filing, please contact me at 717-787-5978.

Sincerely,

s/ John A. Levin

John A. Levin
Assistant Counsel
For: The Organization of PJM States, Inc.

Enclosures

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

PJM Interconnection, L.L.C.,

Docket Nos. ER06-78-000

COMMENTS OF THE ORGANIZATION OF PJM STATES, INC.

The Organization of PJM States, Inc. (“OPSI”), having previously intervened in this matter, herewith submits its Answer to Comments filed in this proceeding by Constellation Energy Commodities Group, Inc. (“CCG”) and Constellation NewEnergy, Inc. (“CNE”) (collectively, “**Constellation**”), as well as its Answer to Protests filed by American Municipal Power, Inc. (“**AMP – Ohio**”) and Public Service Electric and Gas Company (“PSE&G”), PSEG Energy Resources & Trade LLC (“PSEG ER&T”) and PSEG Power LLC (“PSEG Power”) (collectively, the “**PSEG Companies**”) for the consideration of your Commission. Although Rule 385.213 (b) generally prohibits the filing of an answer to a protest, OPSI asks your Commission to waive the provisions of that rule for good cause shown, in that this answer will not delay the proceeding, will assist the Commission in understanding the issues raised, and will insure a complete record upon which the Commission may act. *PJM Interconnection, LLC.*, 102 FERC ¶ 61,277 at P. 12 (2003).

COMMENTS OF CONSTELLATION

1. Constellation states that it supports the formation of the Organization of PJM States, Inc. However it objects to a provision in the instant Schedule 9 – OPSI which

provides the mechanism upon which OPSI will rely to fund its startup and annual operations. The specific provision complained of is Section (c), which states that PJM will submit OPSI's annual budget to your Commission for informational purposes, unless the increase in OPSI's annual budget over the prior year exceeds 15%, in which case PJM will file it for review and approval by your Commission. This provision was drafted and agreed to by OPSI and the PJM Members Committee in order to provide accountability and review over any substantive increase in OPSI's budget, while also providing OPSI with operational flexibility as it starts up and matures as a regional organization.

2. Constellation has two alternative objections to this provision. First, Constellation suggests that your Commission should review every change in OPSI's budget, no matter how small, and asks "that budget increases should be filed with the Commission so that parties have the ability to review and comment on the appropriateness of any increases." Constellation either glosses over or disregards the fact that under the tariff as proposed, OPSI's annual budget *is* submitted to the PJM membership and to your Commission for review and comment. What Constellation apparently wants instead is a locked-in requirement for an annual Section 205 rate proceeding for OPSI funding – a requirement which has not been imposed on any other regional state entity which currently exists. Constellation also fails to consider that in the event that it has an objection to any OPSI budget, it has the ability under the Federal Power Act and your regulations to file a complaint with your Commission to air its objections.

3. Constellation's alternative proposal is that the 15% rate filing trigger in the tariff be lowered to "three to five percent". Constellation provides no rationale for this range, apparently deeming three to five percent obviously reasonable on its face. There is no reason why Constellation's view of reasonableness is more persuasive than that of the PJM Members Committee, PJM Interconnection, LLC, OPSI or ultimately, of your Commission. The funding tariff, as filed, permits OPSI a reasonable degree of organizational flexibility in starting up and developing its operations, while providing for formal review by your Commission of major cost escalations. Moreover, the tariff expressly states that OPSI's budget may only be based upon expenses "that are appropriate to and directly related to the purposes for which OPSI was formed". Schedule 9 – OPSI, section (d). That provision standing alone provides a substantive level of review that should vitiate the objections raised by Constellation. OPSI asks that your Commission reject Constellations two alternative proposals as unsupported and unnecessary.

AMP – OHIO PROTEST

4. AMP – Ohio, a organization of Ohio municipal electric utilities, protests on a different basis. While stating that the amount of initial annual funding of \$425,000 is "a small amount of money", AMP – Ohio takes the position that your Commission should reconsider its policy of encouraging the development of regional state entities and FERC's efforts to foster regional state cooperation and coordination on wholesale market

issues¹. The basis of this position appears to be a generalized opposition to “bureaucracy”² rather than any reasoned argument that OPSI would not facilitate federal / state / RTO cooperation, reduce balkanization of the grid or improve coordination of federal and state jurisdictional roles. While no one loves bureaucracy for its own sake, our federal system has split jurisdiction over the nation’s power system between your Commission and the States in a way that demands better regional and federal/state coordination. Better cooperation between the states in regional markets would improve federal/state exercise of complementary jurisdiction, would directly benefit wholesale markets, and would reduce the chances of jurisdictional stalemate or conflict. In addition, by streamlining PJM / State relations, PJM asserts (an assertion unrebutted by AMP – Ohio) that PJM would experience cost reductions over the present approach of maintaining separate relations with each state in its region.

5. In the alternative, AMP – Ohio argues that if your Commission continues its existing policy, it should “limit the application of that charge to entities that are subject to the jurisdiction of the state agencies. Such a limitation will have only a very minor affect [*sic*] on the individual charges.” *AMP Protest*, at 5. It is not at all clear how AMP – Ohio would define “jurisdiction” or how such a tariff would be constructed or

¹ / Although AMP – Ohio characterizes your Commission’s policy as based upon *dictum* without citing such *dictum*, in fact your Commission has over the last several years expressly encouraged states to actively pursue the formation of regional state entities, both in rulemakings and in orders associated with the formation and business of regional transmission organizations, as recited at footnotes 2 through 6 of the initial filing in this case.

² AMP – Ohio states in its footnote 1: “In this regard, PJM’s assertion (transmittal letter at 3) that “in time OPSI could evolve into a regional layer of coordinated governance,” compared to the “relatively modest” present framework, is demoralizing to those already paying for layers of bureaucracy.”

applied. As AMP – Ohio is an organization of municipal utilities, it obviously believes that it would be exempt from bearing such charges. It is clear, however, that market participants may affect the wholesale and retail markets for better or worse regardless of whether they are state “jurisdictional” entities. As the actions of exempt wholesale generators, “non-jurisdictional” load serving entities and even municipal utilities might raise market design, market administration, market power or other wholesale issues relevant to state concerns, it is impossible to cleave a neat separation of PJM members into “jurisdictional” or “non-jurisdictional” participants. As AMP – Ohio’s points of protest are without merit, OPSI urges that they be dismissed.

PSEG PROTEST

6. PSEG characterizes the 14 state commissions which are members of OPSI as an “interest group” that should not be funded through PJM tariffs. It should be stated at the outset that we reject the characterization. State regulatory authorities have many important obligations to the public interest including assurance of system reliability, service quality; transmission siting and retail / wholesale market monitoring that qualitatively transcend the parochial concerns of any “interest” or “interest group” however defined. None of our 14 member commissions are themselves market participants, nor do any of our members have a pecuniary or vested interest or potential for profit or loss in wholesale market as do many of PJM’s members, including PSEG itself. Neither OPSI, nor its members “benefit” from their actions or positions *vis-a-vis*

PJM or the PJM wholesale market and thus PSEG's assertion that the instant tariff "constitutes a financing mechanism to benefit a particular interest group at the expense of all the transmission customers of PJM" is utterly without merit.

7. PSEG raises the argument that OPSI funding, as to PSEG, constitutes "forced speech" in violation of provisions of the United States Constitution. While the area of Constitutional law regarding speech is complex and ever-changing, it is suggested here that PSEG's mostly conclusory argument proves too much. Many entities regulated by your Commission (and by state commissions as well), either expressly or implicitly include their contributions to the Edison Electric Institute or other interest-based, social, cultural and industry groups as part of the cost of service upon which their rates are based. Collection of such costs would surely not be considered to be "forced speech" by PSEG.³ Nearly every entity regulated by your Commission, or state commissions maintain a significant governmental relations function, the costs of which are borne entirely by ratepayers. Such expenses are ordinarily allowed to be included in utility rates without significant opposition. PJM itself makes contributions to numerous industry organizations, many of which may take positions which may be adverse to those of its members or indeed, adverse to the members of OPSI. PSEG has raised the issue and it is welcome to pursue in other forums it if it continues to think the argument has merit, but we urge your Commission to reject it along with the other arguments in PSEG's protest.

³ It would seem likely but does not appear this record or on the face of PSEG's pleading that PSEG itself includes such expenses in its tariffed rates.

CONCLUSION

8. OPSI respectfully requests that the protests and comments discussed above be dismissed and that the filing be approved.

Respectfully Submitted,

s/ John A. Levin

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For: The Organization of PJM States, Inc.

Dated: December 5, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list compiled by the Secretary in Docket No. ER06-78-000.

. Dated at Harrisburg, Pennsylvania this 5th day of December, 2005.

s/ John A. Levin

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