UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Governance and Stakeholder Reforms) Docket No. AD26-7-000

PRE-CONFERENCE COMMENTS OF THE ORGANIZATION OF PJM STATES, INC.

PJM's governance structure and stakeholder process were developed for a different era. Retail regulators are charged with ensuring adequate electric service at reasonable cost, but they are increasingly unable to fulfill that responsibility as regional rules developed through PJM's stakeholder process and approved by FERC determine a growing share of the costs and reliability outcomes experienced by retail customers. Without a formal means of placing state-developed proposals before FERC in a form the Commission can accept, retail regulators remain accountable for outcomes they have little power to formally shape. The Organization of PJM States, Inc. ("OPSI") therefore appreciates the Commission convening this technical conference.[1] OPSI offers targeted, implementable reforms to improve PJM's independence, decision-making, and accountability.

First, PJM should have additional independence to propose changes to the governing documents containing the rules and processes it administers. Second, should OPSI agree on resource adequacy or transmission cost allocation reforms, PJM or the Transmission Owners ("TOs") should provide that solution to FERC in a way that FERC can accept it. OPSI as an organization was created "to promote and protect the public interest in the provision of reliable and reasonably priced electric service within the PJM Control Area,"[2] and its formal role within

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[1] These comments were unanimously approved by the OPSI Board on July 20, 2026.
[2] PJM Interconnection, L.L.C. and the Organization of PJM States, Inc., Memorandum of Understanding Between the PJM Interconnection and the Organization of PJM States, Inc. (June 1, 2005), available at: https://opsi.us/wp-content/uploads/2020/02/OPSI_PJM_MOU_executed_June_8_2005-1-1.pdf.

PJM's governance framework should be commensurate with that responsibility. At best, the PJM stakeholder process and the independent judgment of the PJM Board of Managers may approximate the public interest, but neither are a direct replacement for the judgment of those who are statutorily obligated to promote the public interest and are ultimately responsible for retail customers' bills. Retail regulators need a more formal means of presenting their proposals to the Commission on a level playing field with PJM and the TOs. Third, PJM's Tariff should formally recognize the PJM Governors' Collaborative and vest it with certain rights and responsibilities within PJM's governance framework and stakeholder process. Additionally, PJM should establish a process through which the Governors' Collaborative may advance state-identified issues through the stakeholder process over the objection of members and a way for OPSI and the PJM Board to jointly prioritize work more effectively.

As discussed below, OPSI believes the mutually reinforcing effect of these reforms, and others discussed below, will improve both the speed with which PJM can bring needed changes to FERC in the near-term and the quality of proposals that come before the Commission over the long-term.

I. COMMENTS

In May 2005, OPSI incorporated with the express purpose of serving as the PJM Regional State Committee, maintaining an organization of the states and providing a means for the states to act collaboratively with PJM when doing so would be in the public interest.[3] OPSI entered into a Memorandum of Understanding with PJM on June 1, 2005 to facilitate communication and take cooperative action "to promote and protect the public interest in the provision of reliable and

[3] OPSI, State of Delaware Certificate of Incorporation (May 5, 2005) available at: https://opsi.us/wp-content/uploads/2018/08/OPSI-Articles-of-Incorporation.pdf.

reasonably priced electric service within the PJM Control Area."[4] In October 2005, PJM filed an amendment to the PJM Open Access Transmission Tariff ("Tariff") to provide a mechanism for OPSI's funding and described OPSI as a "group formed to coordinate state involvement in affairs related to PJM."[5] PJM wrote "PJM Members should welcome the formation of an RSC that is conceived with the limited and constructive objectives of coordinating state policies and serving as a conduit for information between the states and the RTO."[6]

The Commission accepted OPSI's funding mechanism on December 20, 2005, noting that "[T]he Commission has recognized state authority affecting such matters as transmission and capacity planning is crucial to the development of efficient energy markets" and that "OPSI has much to offer in formulating policies for the PJM region."[7] FERC wrote, "The formation of OPSI will help PJM to regularize its processes of interacting with the states to achieve the objectives of the RTO…," and OPSI "has the potential to bring public policy perspectives to PJM's deliberations on issues such as the adequacy of resources to meet projected growth levels in the region."[8]

For more than twenty years, OPSI has played a crucial role in important conversations at both PJM and before the Commission by:

- promoting settlement negotiations establishing an external, independent Market Monitoring Unit in PJM in 2007 and 2008,[9]

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[4] PJM Interconnection, L.L.C. and the Organization of PJM States, Inc., Memorandum of Understanding Between the PJM Interconnection and the Organization of PJM States, Inc. (June 1, 2005), available at: https://opsi.us/wp-content/uploads/2020/02/OPSI_PJM_MOU_executed_June_8_2005-1-1.pdf.
[5] PJM Interconnection, L.L.C., Transmittal Letter, Docket No. ER06-78-000 (October 27, 2005).
[6] *Id.* at 3.
[7] 113 FERC ¶ 61,292 (2005) at P 5 and 32.
[8] *Id.* at P 33.
[9] *See* FERC Docket No. EL07-58.

- providing constructive comments on transmission cost management[10] and in Order No. 1000[11] in the early 2010s, and Order No. 1920 transmission cost allocation conversations, in the 2020s,[12]
- providing timely[13] and persistent[14] advocacy for public interest solutions in response to evolving dynamics within the PJM resource adequacy construct, in 2024, on issues like Reliability Must Run procedures, Must Offer Requirements for Capacity Resources, and capacity market price formation that resulted in quick solutions the Commission accepted,[15] and
- advocating for public interest solutions on topics as technical as the multi-schedule selection process in the Day-Ahead Energy Market[16] among countless others over the past 20 years.[17]

In addition to formal communication both within the PJM Stakeholder Process and before the Commission, OPSI meets with the PJM Board of Managers three times each year in person and with PJM's CEO and Board Committees as necessary. OPSI has found this arrangement to be valuable but offers the following comments to further enhance PJM's ability to carry out its core functions and enhance the ability of the states to offer the public interest perspective both within the PJM Stakeholder Process and before the Commission.

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[10] OPSI, Comments of the Organization of PJM States, Inc., Docket No. AD22-8-000 (Mar. 23, 2023).
[11] *See* OPSI, OPSI Resolution OPSI-2012-1, available at: https://opsi.us/wp-content/uploads/2018/08/OPSI-2012-1.pdf, OPSI, Letter to the PJM Board of Managers Re: State Agreement Approach (June 12, 2012), available at: https://opsi.us/wp-content/uploads/2018/08/State_Agreement_1_letter.pdf; OPSI, Motion to Intervene and Comments of the Organization of PJM States, Docket No. ER13-198-000 (Dec. 10, 2012), and OPSI, Letter Re: Docket Nos. ER14-2864-000 and ER14-2867-000 available at: https://opsi.us/wp-content/uploads/2025/05/OPSI-Multi-value-response.pdf.
[12] Building for the Future Through Electric Regional Transmission Planning and Cost Allocation, Unopposed Motion for Extension of Time and Request for Expedited Consideration of PARSEC and PJM Transmission Owners, Docket No. RM21-17 (June 4, 2026).
[13] OPSI, Letter to the PJM Board of Managers (Sept. 27, 2024) available at: https://opsi.us/wp-content/uploads/2024/09/OPSI-BRA-RESPONSE-LETTER-2024.09.27.pdf.
[14] OPSI Letter to the PJM Board of Managers (November 21, 2024) available at: https://opsi.us/wp-content/uploads/2024/11/OPSI-RPM-Proposal-Letter-2024.11.21.pdf; OPSI, Letter to the PJM Board of Managers (Dec. 17, 2024) available at: https://opsi.us/wp-content/uploads/2025/01/OPSI-LETTER-Capacity-Market-Must-Offer-Exemption.pdf.
[15] *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,088 (2025), *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,117 (2025).
[16] OPSI, Protest of the Organization of PJM States, Inc. (Mar. 22, 2024), available at https://opsi.us/wp-content/uploads/2024/05/ER24-1387-Multi-Schedule-Selection-Protest-2024.03.22.pdf and 187 FERC ¶ 61,051.
[17] OPSI, Resolutions and Filings available at: https://opsi.us/resolutions-and-filings/.

Panel 1 - Q4. How does the division of Federal Power Act section 205 filing rights among PJM, Transmission Owners, and the Members Committee affect PJM's ability to act effectively and quickly, when warranted, to address operational and market needs?

Panel 1 - Q5. To what extent do provisions in PJM's Operating Agreement, Transmission Owner Agreement, Open Access Transmission Tariff, Reliability Assurance Agreement, or Manuals impede timely decision-making by PJM?

Most saliently, PJM has no independent, unilateral authority to amend the PJM Operating Agreement ("OA"). Instead, PJM must obtain the approval of the PJM Members Committee ("MC") before it may propose amendments to the OA under FPA Section 205. The OA contains many provisions critical to PJM's functioning, including its transmission planning rules, energy market rules, and rules governing PJM's purpose and authority. Additionally, the MC, itself, has the power to amend the OA pursuant to a 2/3 sector-weighted vote of the membership,[18] and PJM is required to file those agreements for FERC's consideration under FPA 205.[19] Even when the two-thirds sector-weighted vote is merely advisory, setting such a high threshold for consensus often transforms stakeholder voting into an exercise in veto power rather than a process that promotes collaboration.

Accordingly, if PJM believes it is in the best interests of the organization to modify any provision of the OA, it must receive 2/3 support of the members to even bring that proposal before the Commission under Section 205 of the FPA. This impedes PJM's ability to timely address many critical issues, and forecloses valuable conversations between states, stakeholders, and the PJM Board, recognizing that even if they agree, the Board is powerless to unilaterally propose to FERC modifications to the OA. This inability for the PJM Board to propose changes not only delays or prevents progress on issues related to the OA but has the potential to negatively affect other aspects

[18] PJM, Operating Agreement at §§ 8.4, 8.8.ii and 18.6.
[19] *Id.* at §10.4.xiii.

of PJM's processes. For example, if PJM identifies a need to revise its transmission-planning or energy-market rules to promote resource adequacy but lacks a viable path to advance those changes, it may be forced to attempt to reform rules within its control. That approach may produce a less optimal and less targeted solution than addressing the transmission or energy-market issue directly.

As an example, PJM attempted to relocate its regional transmission planning rules from the OA to the Tariff in 2024, but because the Members did not support PJM's proposal,[20] PJM had to file an FPA Section 206 complaint, which the Commission ultimately rejected, showing the difficulty PJM has in asserting its independence over some of the most important rules it administers.[21]

> **Recommendation 1:** PJM should have the authority to independently and unilaterally propose changes to the OA under Section 205 of the FPA. PJM's inability to independently file changes to the OA is a relic of PJM's formation as an Independent System Operator ("ISO"), and in order to provide PJM with the independence and agency it needs, the Commission should correct this.

When PJM's founding members made their initial filing requesting PJM be recognized as an ISO, they proposed to put many important provisions in the PJM Tariff. FERC found that locating many of the foundational PJM ISO rules in the Tariff would have prevented PJM from being truly independent since a single sector had the ability to modify the Tariff at the time.[22] Therefore, FERC rejected PJM's initial ISO filing.[23]

Upon refiling, the only other document available to house the rules PJM needed to administer to become an ISO was the OA. The PJM Supporting Companies wrote, that placing the

[20] PJM, Supplemental Voting Results, PJM Members Committee (May 6, 2024) available at: https://www.pjm.com/-/media/DotCom/committees-groups/committees/mc/2024/20240506-annual/mc-voting-results---item-08---proposed-oa-and-tariff-revisions-effectuating-the-transfer-of-the-regional-transmission-expansion-planning-protocol.pdf.
[21] *PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,181 (2024) and *PJM Interconnection, L.L.C.*, 192 FERC ¶ 61,051 (2025).
[22] *Atlantic City et. al.*, 77 FERC ¶ 61,148 at p. 37.
[23] *Id.*

governance and other rules in the OA and only allowing PJM to file FPA 205 filings to amend them pursuant to a 2/3 sector weighted vote provided "a system of checks and balances that will assure non-discriminatory, open access transmission service throughout the PJM control area."[24] FERC wrote that this arrangement satisfied Order No. 888's Independence Principle.[25]

While this alternative was certainly better than placing these rules in a document that could be amended with the approval of only a single sector, it did not equate to the level of true independence over the rules as exists in other RTOs. Even through the development and implementation of FERC Order No. 2000, PJM remained a membership-based organization first and foremost, as it is today, and PJM and FERC balanced those interests as they considered PJM's governance framework.[26]

OPSI raises this not to diminish the value of eliciting and understanding the important perspectives of PJM's Members. To the contrary, conversations within the PJM stakeholder process are extremely beneficial in identifying solutions to many of the region's most pressing challenges, especially when the process reflects consensus of stakeholders and/or efficiently articulates problems and potential solutions. However, for example, in recent stakeholder processes on the rapid integration of new large loads, PJM's stakeholder process has struggled to

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[24] *Atlantic City Electric Company et al.*, Filing of the PJM Supporting Companies, Docket No. EC97-38-000 and ER97-3189-000 p. 3 (June 2, 1997).

[25] *Atlantic City et. al.*, 81 FERC 61,257 at p. 63 (1997) ("The Commission approves the ISO governance structure filed by Supporting Companies. The PJM Board has the broad technical skills that are necessary to manage the ISO and it possesses the requisite independence from the transmission owners that the Commission previously found to be lacking in Supporting Companies' prior restructuring application. ISO Principle No. 1 provides that a governance structure should fairly represent all users of the transmission system. We believe that the Members Committee established by the PJM Operating Agreement fairly represents the broadest possible users of the ISO… Therefore, no modification is required to satisfy ISO Principle No. 1.").

[26] PJM Interconnection L.L.C., Order No. 2000 Compliance Filing at p. 15 (Oct. 11, 2000) ("While the PJM members (i.e., the market participants) have certain powers, those powers have been carefully limited and balanced. The PJM Members Committee may elect the PJM Board from a slate of candidates selected by an independent consultant; it may form additional advisory committees; it may amend and terminate the PJM Operating Agreement (subject to Commission approval); and it may advise the PJM Board.").

identify consensus.[27] Further, far too often the PJM stakeholder process becomes a vehicle for repetition and delay rather than producing focused feedback that can inform PJM Board decisions. Even if the stakeholder process functions perfectly, recognizing that none of the over 1,000 voting members at PJM are tasked with defending and promoting the public interest, it is unreasonable to believe that this process will consistently produce proposals that do just that, as will be discussed in the next section.

Panel 1 - Q3. What governance reforms would best improve accountability and responsiveness?

Panel 1 - Q6. Recognizing regional differences, are there lessons from other regional transmission organization/independent system operator (RTO/ISO) governance structures that PJM could reasonably adopt to improve its responsiveness to the region's operational and market challenges?

As discussed in Recommendation 1, giving PJM independence over the OA would bring PJM's governance process in line with the advisory nature of the membership in other RTOs and would be a step in the right direction, but it is not the only needed change.[28] In addition to PJM independence, one notable model allows either RTO Members or the states to compel filings under Section 205 of the FPA. In the ISO-NE context this is called a "jump-ball" filing.[29] Importantly, though, ISO-NE retains independence to file its own proposal. Similarly, and more broadly, the Southwest Power Pool-Regional State Committee ("SPP-RSC") has the authority to compel SPP to make filings on resource adequacy rules pursuant to their authority to "determine the approach for resource adequacy across the entire region."[30] It is clear that RTOs can agree to a condition to

[27] *See* PJM, Special MC – Critical Issues Fast Path, Large Load Additions (Nov. 19, 2025). *See also* PJM, Special MC (June 30, 2026).
[28] *See* Exeter Associates, *Governance Structures and Practices in the FERC-Jurisdictional ISOs/RTOs* (Feb. 2021), available at: https://nescoe.com/wp-content/uploads/2021/02/ISO-RTOGovernanceStructureandPractices_19Feb2021.pdf.
[29] *Id.* at p. 3-10 citing ISO-NE, Participants Agreement, Section 11.1.5.
[30] SPP Bylaws, Section 7.2.

make filings on behalf of other entities using their own authority to make filings under FPA Section 205.

> **Recommendation 2A:** Accordingly, OPSI recommends that PJM agree to, and make a filing to effectuate, a requirement that PJM make FPA Section 205 filings on OPSI's behalf, when OPSI agrees to changes to the RAA or sections of the Tariff PJM controls.

Retail electric regulators in the PJM region are directly accountable to retail customers and have are required to ensure resource adequacy at the lowest cost. However, many important resource adequacy rules are addressed in PJM's stakeholder process and before the Commission, leaving traditional economic regulators of the electric industry without a formal or meaningful avenue to advance their own solutions before the federal regulator responsible for approving those very same regional rules. This leaves regulators with little control over the regional processes that ultimately determine the costs assigned to those customers and places them in an untenable position.

PJM's CEO has indicated that many important decisions about the value of reliability and functioning of PJM's markets in maintaining resource adequacy "belong to the people and institutions with democratic accountability for their consequences."[31] OPSI agrees. States are the traditional economic regulators responsible for resource adequacy. They should not lose any formal role merely because they rely on interstate infrastructure to obtain the economic and reliability benefits of regional coordination or are impacted by rules and regulations of a FERC approved private entity affecting their authority over planning for their own vertically integrated supply choices. OPSI therefore believes retail regulators should have an appropriate role in determining the region's approach to resource adequacy.

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[31] David E. Mills, Letter to Stakeholders (May 6, 2026) available at: https://www.pjm.com/-/media/DotCom/library/reports-notices/special-reports/2026/20260506-powering-reliability-through-market-design.pdf.

Most directly, PJM has unilateral authority over the Reliability Assurance Agreement ("RAA") and most of the Tariff.[32] Attachment DD to the Tariff contains rules governing PJM's Reliability Pricing Model ("RPM"), but there are also critically important resource adequacy rules located in PJM's RAA on the Fixed Resource Requirement Alternative,[33] PJM's Forecast Pool Requirement,[34] and rules related to the capability and deliverability of generation,[35] among others.

As will certainly be noted at the technical conference, all states in SPP are vertically integrated, whereas many states in PJM are restructured. OPSI does not see the fact that many retail jurisdictions in PJM are restructured as fundamentally diminishing their interest in, or the prudence of, granting PJM states a more formal role in determining the resource adequacy approach in the region. To the contrary, it underscores the important role states should have in PJM – because much of PJM relies on the market for resource adequacy, it is more important than ever that states have a formal role in shaping those market rules. Moreover, states that remain fully regulated but whose vertically integrated utilities have been allowed to join PJM are subject to PJM's directives regarding the timing, amount and location of their capacity choices. Therefore, those states have an interest in a more formal role in determining the resource adequacy approach in the region.

A formal state role would improve the quality of PJM's decision-making by ensuring that regional proposals reflect the statutory responsibilities and practical concerns of retail regulators.

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[32] PJM Tariff, Section 9.2 (a) ("(a) PJM shall have the exclusive and unilateral right to file pursuant to Section 205 of the Federal Power Act and the FERC's rules and regulations thereunder to make changes in or relating to the terms and conditions of the PJM Tariff (including but not limited to provisions relating to creditworthiness, billing, and defaults) as well as all charges for recovery of PJM costs. PJM shall not have any Section 205 filing rights with respect to the subject matters described in the first sentence of Section 9.1(a) of this Tariff. PJM shall not have any Section 205 filing rights with respect to the provisions of the PJM Tariff listed in Section 9.1(d) and (e)."). PJM RAA, Section 16.4 ("This Agreement may be amended only by action of the PJM Board…The PJM Office of the Interconnection shall file with FERC any amendment to this Agreement approved by the PJM Board.").

[33] RAA Schedule 8.1.

[34] *Id.* at Schedule 4 and 4.1.

[35] *Id.* at Schedule 10.

More structured state participation earlier in PJM processes would also promote more substantive dialogue regarding the assumptions, alternatives, and consumer impacts underlying proposed reforms. Indeed, SPP described a real-world example of how increased formal filing rights for retail regulators can lead to more constructive conversations with the RTO, even outside a formal filing process.[36] Further, this should lead to more robust analysis, including the development and evaluation of additional scenarios that may not otherwise receive meaningful consideration. It would also promote greater transparency into PJM's reasoning and allow states to assess more effectively how regional resource adequacy decisions will affect retail customers.

Equally, and importantly, as recognized in FERC Orders Nos. 1920, 1920-A, and 1920-B[37], state involvement in planning and transmission cost allocation is likely to promote more efficient outcomes for consumers. OPSI appreciates the role that the Commission provided states in Order No. 1920-A and has been engaging with the PJM Transmission Owners to develop a cost allocation framework for PJM's long-term planning practices. OPSI believes that it would be equally beneficial to apply the lessons learned through this process to PJM's other regional transmission planning and cost allocation frameworks.

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[36] Multi-State Technical Conference, Summit on the State of PJM Interconnection, RTO Governance: Lessons Learned from Other Regions, September 2025 PJM Governors Meeting 20:51–21:12 (Sept. 22, 2025) (remarks of Leonard Tao, Director of FERC Policy, Southwest Power Pool), available at https://mcusercontent.com/16acb34ffcb6673b17aa36bad/files/c0a1c8ac-22b0-54c3-68fb-ebeb17c29b38/Transcript.pdf ("The biggest impact on that is not the fact that we file, because we very rarely do. It's how states then show up in the cost allocation conversation and increasingly the planning conversation as well. … It's one of these things where the legal provision then unlocks a different—it's a full shift in how the process operates on the ground that, in some ways, is detached from the legal process or the actual filing rights. But because that's there in the background, the conversation is just fundamentally different.").

[37] *Building for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068, at P 1364 (2024) (Transmission Facilities "selected through Long-Term Regional Transmission Planning could help increase stakeholder—and state—support for those facilities, which, in turn, may increase the likelihood that those facilities are sited and ultimately developed with fewer costly delays and better ensure just and reasonable Commission-jurisdictional rates."); *Building for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation*, Order No. 1920-A, 189 FERC ¶ 61,126, at P 3 (2024) ("[M]eaningful engagement with states is critical to the success of the Long-Term Regional Transmission Planning reforms established in Order No. 1920 . . . [These modifications] will increase the likelihood that Long-Term Regional Transmission Planning results in efficient and cost-effective transmission investment.").

> **Recommendation 2B:** The PJM Transmission Owners should agree to, and make a filing to effectuate, a requirement that the TOs make FPA Section 205 filings on OPSI's behalf when OPSI comes to an agreement on cost allocation methods for regional transmission projects.

As stated above, retail regulators are closest to the retail customers whose bills are greatly impacted by the transmission cost-allocation methodologies used in the PJM region. Nothing in Recommendations 2A, 2B, or 2C is intended to infringe upon or weaken the FPA Section 205 rights of either PJM or the Transmission Owners, or to prevent them from utilizing those rights to the fullest extent. That is not what SPP proposed in its Order No. 2000 compliance filing, and it is not what OPSI is asking for here. The context and history in PJM is different than SPP, and controlling precedent in *Atlantic City v. FERC* prevents FERC from involuntarily transferring the PJM TOs' FPA Section 205 filing rights to PJM pursuant to its creation as an RTO, writing that by doing this, "FERC thereby eliminated the very thing that the statute was designed to protect — the ability of the utility owner to 'set the rates it will charge prospective customers, and change them at will'".[38] However, the D.C. Circuit wrote in the very next line in *Atlantic City*, "Of course, utilities may choose to voluntarily give up, by contract, some of their rate-filing freedom under section 205."[39] **To be clear, OPSI is not asking that they give up *any*[40] of their filing authority**

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[38] *Atlantic City*, 295 F.3d at 10 (quoting *City of Cleveland v. FPC*, 525 F.2d 845, 855 (D.C. Cir. 1976)).
[39] *Id*.
[40] *Atlantic City Electric Co. v. FERC*, 295 F.3d 1, 6, 10–11 (D.C. Cir. 2002) ("Rather than permit unilateral filings by the individual utilities as provided in section 205, FERC found that PJM-OI had the 'right and responsibility to participate in the development of any such revisions and to intervene in any proceedings pertaining to such filings.' Thus as FERC would have it, only the ISO could propose changes in rate design. . . . FERC cannot point to any statute giving it authority for its unprecedented decision to require the utility petitioners to cede rights expressly given to them in section 205 of the Federal Power Act. . . . Yet here, FERC purports to deny the utility petitioners any ability to initiate rate design changes with respect to services provided with their own assets. . . . FERC thereby eliminated the very thing that the statute was designed to protect—the ability of the utility owner to 'set the rates it will charge prospective customers, and change them at will,' subject to review by the Commission. . . . In sum, FERC lacks the authority to require the petitioners to cede their right under section 205 of the Act to file changes in rate design with the Commission." (emphasis in original) (quoting *City of Cleveland v. FPC*, 525 F.2d 845, 855 (D.C. Cir. 1976))). OPSI notes that *Atlantic City* addressed FERC's attempt to require the transmission owners to fully surrender their Section 205 filing rights to PJM and to deny the transmission owners any ability to initiate rate-design changes. OPSI
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under FPA Section 205. Instead, OPSI is simply requesting that they add a condition to these rights, voluntarily, to make a filing on behalf of the states in the same manner that transmission providers in SPP, MISO, and ISO-NE have done.

That collaboration will enable PJM to reach public-interest outcomes more often. Cooperation among PJM, the TOs, and OPSI means PJM will be better positioned not only to plan transmission, but also to support the development of needed infrastructure, which ultimately supports PJM's ability to implement efficient markets. To develop generation and transmission infrastructure efficiently, there must be state buy-in and fair prices for retail customers. Providing an opportunity for revisions to regional transmission cost-allocation methods when supported by retail regulators in the PJM region will give them much-needed accountability and the ability to place public-interest proposals before the Commission, with the Commission retaining ultimate authority to determine whether cost-allocation proposals are just and reasonable.

Increasing OPSI's ability to advance FPA Section 205 filings on these important issues will promote more efficient transmission development and more durable solutions more quickly, while reducing the likelihood of protracted litigation over cost allocation by giving states an earlier and more meaningful role in the process. OPSI recognizes the long legal history associated with the transfer and exercise of FPA 205 filing rights. In rejecting the original SPP-RSC proposal, but recognizing a proposal from Arkansas and Missouri Commissions that proposed various subjects on which SPP should make a filing under FPA Section 205 on behalf of the states,[41] the

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proposes only that the Transmission Owners agree to apply a condition to their Section 205 filing rights that would not affect their ability to make Section 205 filings. Those facts make OPSI's recommendation fundamentally different from the circumstances and proposal prohibited in *Atlantic City*.

[41] Southwest Power Pool, Inc., Joint Comments of the Public Service Commissions of Arkansas and Missouri, Docket Nos. RT04-01-000 and ER04-48 (Nov. 26, 2003) (The RSC shall determine for SPP: decisions on the allocation of physical transmission capacity or the financial rights equivalent; decisions on postage stamp versus license plate rate design; decisions on how incremental transmission capacity will be funded (except for those related to routine

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Commission wrote that the SPP-RSC should have several important authorities and directed SPP to provide them in a compliance filing.[42] Chair Wood agreed, writing, "In this order, I would have accepted SPP's revised Bylaws with regard to the role of the Regional State Committee and would have directed the addition of certain additional language taken from the Supporting Commissions' pleading."[43] But notably, there were concerns identified by commenters and Commissioner Kelliher, including "whether a Regional State Committee can require a Regional Transmission Organization to make a filing to the Commission."[44] Nonetheless, SPP adopted the Commission's recommendation verbatim including the language in footnote 42 of these comments, and the Commission approved this provision.[45]

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maintenance and operations and other minor upgrades), and the costs allocated among transmission users; decisions on rate design issues including "through and out rates," export rates or similar tariff mechanisms that should be used to minimize cost-shifting among transmission customer groups or zones; decisions supplemental to FERC as to market power monitoring measures; decisions as to regional transmission planning and expansion issues that affect cost responsibility among transmission owners and load serving entities; decisions as to requests for waiver(s) of any non-price terms and conditions that may be incompatible with bundled retail service needs; and decisions on implementation of wholesale markets beyond the energy imbalance market. Once the RSC reaches a decision on the methodology that would be used on the issues listed above, SPP shall file this methodology pursuant to Section 205 of the Federal Power Act. In addition to this filing made on behalf of the RSC, SPP, any individual member or regulatory body may intervene pursuant to their respective Section 205 filing rights and propose an alternative methodology. On matters referred to in this paragraph for which the RSC may provide direction to SPP, a decision of the RSC requires affirmative votes of two-thirds of the members voting. If the RSC is unable to reach a timely decision on any of these matters, SPP may file its own proposal regarding any of these matters pursuant to Section 205 of the Federal Power Act.").

[42] Southwest Power Pool, Inc. 106 FERC ¶ 61,110, PP 219–221 (2004) ("The RSC should have primary responsibility for determining regional proposals and the transition process in the following areas: (1) whether and to what extent participant funding would be used for transmission enhancements; (2) whether license plate or postage stamp rates will be used for the regional access charge; (3) FTR allocation where a locational price methodology is used; and (4) the transition mechanism to be used to assure that existing firm customers receive FTRs equivalent to the customers' existing firm rights. If the RSC reaches a decision on the methodology that would be used, SPP would file this methodology pursuant to Section 205 of the FPA. SPP can also file its own proposal pursuant to Section 205.The RSC should also determine the approach for resource adequacy across the entire region. In addition, with respect to transmission planning, the RSC should determine whether transmission upgrades for remote resources will be included in the regional transmission planning process and the role of transmission owners in proposing transmission upgrades in the regional planning process. Finally, the alternate proposal the Supporting Commissions filed provides for an affirmative vote of two-thirds of the RSC members voting to require a Section 205 filing. We do not believe that this element of the RSC structure needs to be included in SPP's Bylaws. Rather, the RSC should determine its voting structure, make such structure known, and, when a measure is passed in accordance with such structure, inform SPP.").

[43] *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 (2004) (Wood, Chairman, concurring).

[44] *Id.* (Kelliher, Comm'r, concurring).

[45] *Southwest Power Pool, Inc.*, 108 FERC ¶ 61,003, PP 118–120 (2004).

The following extracts show how the other three multi-state RTOs have conditioned FPA 205 filing rights to compel filings on behalf of their state regulators or provided an important resource adequacy right to the states, as in the MISO context:

> SPP
>
> The [Regional State Committee] has primary responsibility for determining regional proposals and the transition process in the following areas:
>
> (a) whether and to what extent participant funding will be used for transmission enhancements;
>
> (b) whether license plate or postage stamp rates will be used for the regional access charge;
>
> (c) financial transmission rights (FTR) allocation, where a locational price methodology is used; and
>
> (d) the transition mechanism to be used to assure that existing firm customers receive FTRs equivalent to the customers' existing firm rights.
>
> The RSC will also determine the approach for resource adequacy across the entire region. In addition, with respect to transmission planning, the RSC will determine whether transmission upgrades for remote resources will be included in the regional transmission planning process and the role of transmission owners in proposing transmission upgrades in the regional planning process.
>
> As the RSC reaches decisions on the methodology that will be used to address any of these issues, SPP will file this methodology pursuant to Section 205 of the Federal Power Act. However, nothing in this section prohibits SPP from filing its own related proposal(s) pursuant to Section 205 of the Federal Power Act.[46]
>
> MISO
> At any point during the stakeholder process developing a proposal seeking to amend an existing regional cost allocation methodology or develop a new cost allocation methodology as per Article II, Section II.E.3.b of this Appendix K, the [Organization of MISO States] Committee may undertake to develop and request MISO file an OMS Committee alternative cost-allocation methodology, so long as 66% of all of the OMS Committee voting members agree to this undertaking and pursuant to Section II.E.3.a of this Appendix K. At the end of the stakeholder process MISO will either file with FERC a new transmission cost allocation methodology, a change to an existing transmission cost allocation methodology or will provide the OMS Committee with a written explanation of its decision not to

[46] SPP Bylaws at Section 7.2. *See* Southwest Power Pool, Inc. 108 FERC ¶ 61,003 at P 118-120 (2004).

> file changes to the Tariff. If MISO does not file changes to the Tariff, no OMS alternative cost-allocation methodology will be filed with FERC by MISO.[47]
>
> The Transmission Provider will determine a Planning Reserve Margin (PRM) in terms of Unforced Capacity for each Season using analytical study methods described in Section 68A.2, provided that if a state regulatory authority establishes a PRM for its regulated entities that is higher or lower than the PRM determined by the Transmission Provider, then the state regulatory authority-established PRM will apply to the Coincident Peak Demand of LSEs under that state's jurisdiction.[48]
>
> <u>ISO-NE</u>
> If the Regional State Committee opposes the [Participating Transmission Owners'] proposal to change the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto), the PTOs may make the Section 205 filing to modify the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto); provided that: (1) such filing may not go into effect until FERC has approved the filing; (2) the Regional State Committee will have the right to provide the PTOs with an alternative proposal to change the cost allocation provisions set forth in Schedules 11 or 12 of the ISO OATT as of the Operations Date (or the successors thereto) which the PTOs will include in their Section 205 filing and which will be considered on an equal footing with the PTOs' proposal in the FERC proceeding, and (3) such alternative proposal shall not adversely affect the rights of the affected PTO(s) to fully recover their FERC-allowed revenue requirements and the amount of incentive payments associated with FERC-allowed incentive arrangements for the PTO(s) or result in any costs previously approved or accepted for recovery under either a federal or state-jurisdictional rate thereafter becoming unrecoverable under either a federal or state-jurisdictional rate.[49]

And further, in a new state-agreed-upon process that FERC approved in 2024, FERC approved a process by which the New England States Committee on Electricity ("NESCOE") can request alternative cost allocation methods for Longer-Term Transmission Upgrades through a formal written request to the ISO.[50] For projects with a benefit-to-cost ratio greater than 1.0, NESCOE can request a specific, alternative cost allocation—this allows the incremental costs for addressing longer-term needs to be allocated differently than the default method. For projects that

[47] MISO Transmission Owners Agreement, Appendix K, 2.E.
[48] MISO Tariff Module E-1 - 68A.1 - Establishment of Planning Reserve Margins.
[49] ISO-NE Transmission Operating Agreement, Article II, 3.04(h)(vi)(C).
[50] *ISO New England, Inc.*, 188 FERC ¶ 61,010 (2024).

do not meet the 1.0 benefit-to-cost ratio, NESCOE can request the specific cost allocation method for the portion of costs that is not covered by regional benefits and will be funded by voluntarily participating states.

> **Recommendation 2C:** Should PJM receive the authority to make unilateral FPA Section 205 filings in line with Recommendation 1 above, PJM should further agree to attach a condition to those rights that would require it to make filings on OPSI's behalf on important regional transmission planning and markets rules located in the OA.

Expanding upon the examples above, should FERC agree and direct that PJM have expanded independent filing authority over provisions of the OA, it is appropriate that PJM make filings on OPSI's behalf related to these provisions as well. OPSI recognizes this goes beyond the arrangements in other regions, but the interest in state involvement in transmission planning and energy markets applies just as equally to state involvement in resource adequacy and transmission cost allocation issues. The rules on these matters greatly affect retail customers and warrant a greater role for the states in getting public interest proposals before the Commission.

> **Panel 1 - Q2. How should states, through the Organization of PJM States, Inc. or other structures, interface with the Board to enable the region to meet operational and market challenges while respecting PJM's independence?**

Enhancing the role of OPSI, as described above, would meaningfully improve the governance framework in PJM by allowing both RTO and state public-interest informed filings to come before the Commission.

> **Recommendation 3: OPSI supports formal recognition of the PJM Governors' Collaborative in the PJM Tariff.**

OPSI welcomes the expanded engagement of state and local executives and believes that their voice has the potential to provide much needed leadership to guide PJM through increasingly challenging policy debates and foster clarity when there is indecisiveness or a lack of consensus.

First, this Governors' Collaborative should have the ability to propose problem statements and issue charges directly to the PJM Board, avoiding the need to receive supermajority support from PJM Members to initiate stakeholder processes on issues that are important to the states. This would allow the PJM Board to direct a process to further define issues and identify solutions in areas important to the states. This process would allow the PJM Board to decide whether state-sponsored issues should be elevated and advanced in the face of PJM Member opposition. Second, this group should be able to recommend proposals to the PJM Board of Managers when there is a lack of consensus at the end of a stakeholder process, providing timely direction to the PJM Board of Managers in some circumstances. And finally, this group should be able to appoint three members to the PJM Board Nominating Committee. It is important that the Collaborative establish binding internal rules to ensure its appointees represent the diverse political and energy policy perspectives of the 14 PJM jurisdictions and that any action the Collaborative takes represents broad consensus of state and local executives in the PJM region. This suite of rights and responsibilities has the potential to bring the region's executives into the PJM's stakeholder and governance processes and elevate an important voice in conversations on the most pressing issues the region faces.

Panel 2 - Q3. Are there structured opportunities in the stakeholder process for state participation (e.g., defined consultation windows, joint technical sessions) to provide input on topics that are of interest to the states?

Panel 2 - Q5. What reforms to the stakeholder process could ensure PJM can meet the region's challenges?

As stated throughout these comments, states are responsible for overseeing retail bills, but they have little ability to influence many of the regional costs that ultimately appear on those bills. Just as important as giving states a meaningful avenue to place proposals before FERC is giving states a meaningful ability to provide leadership within the PJM stakeholder process and elevate certain issues for discussion, even over stakeholder objection.

The current stakeholder process does not provide the states with a meaningful way to prioritize issues of particular importance to retail regulators and the customers they represent. Instead, states must generally rely on the ordinary stakeholder process to identify problems, develop solutions, and recommend those solutions to the PJM Board for implementation. That structure leaves state-priority issues dependent on whether other stakeholders choose to advance them and whether they can survive a process not specifically designed to address the states' public-interest responsibilities.

The Governors' Collaborative should be able to advance issue charges and problem statements, even over Member objection, where the Board agrees that doing so is appropriate. The process should be structured to produce timely, practical recommendations that stakeholders and Members can support. At its conclusion, the PJM Board should retain authority to accept, reject, or otherwise act on the recommended solutions based on the record developed through that process. Separately, PJM should establish a process through which OPSI may identify priority issues for consideration by the PJM Board. If OPSI and the Board agree that an issue should be prioritized, the Board should be able to direct a focused stakeholder process to define the problem, evaluate alternatives, and identify solutions.

To improve transparency, PJM should publicly disclose firm-level voting results for all committees, except for Board elections and matters involving personnel or compensation. Greater transparency would improve accountability, provide a clearer record of stakeholder positions, and allow the Board, regulators, and the public to better evaluate the level and breadth of support for proposals. Further, PJM's stakeholder process has ballooned to fill many hours of most days throughout the year. PJM's stakeholder process could benefit from increased focus and efficiency by soliciting a wider range of perspectives and reducing repetition. Consistent voting rules should be applied throughout PJM's stakeholder process. Lower-level committees, where issues are first developed and refined, should use the same sector-weighted voting framework that governs senior standing committees. This would ensure that proposals advance based on a consistent expression of stakeholder support rather than changing voting standards as they move through the process.

And finally, to better promote Board member independence and improve the quality of dialogue between the PJM Board of Managers, states, and stakeholders, the Commission should consider the following reforms. First, Board member terms should be lengthened to strengthen independence and encourage a longer-term perspective. Longer board member terms, balanced with term limits, could ensure that Board members would be able to act independently without being concerned that voting stakeholders dissatisfied with those Board decisions would easily deny them reappointment. Second, the PJM Board's *ex parte* restrictions should be revised to allow the PJM Board to engage in more regular and meaningful discussions with states and all stakeholders. Any reduction in *ex parte* restrictions should be accompanied by greater transparency regarding the Board's interactions, including enhanced reporting on discussions at both Liaison Committee meetings and PJM Board of Managers meetings, which are currently closed to the states. Finally, while it is important that Board members have broad experience and understand wholesale power markets beyond the PJM region, candidates with deep knowledge of PJM and the region it serves should not be disadvantaged simply because they reside in or have worked within the footprint.

II. CONCLUSION

The combined effect of these recommendations has the potential to more meaningfully incorporate the voice of the states and promote the quicker identification and acceptance of solutions to solve the region's most pressing needs. Consensus in PJM is only becoming more difficult to achieve, and creating formal pathways for state leadership where consensus exists stands to better situate PJM to tackle the biggest issues it faces. OPSI's goal is to give PJM and FERC additional tools to protect consumers by enabling stronger leadership from each when appropriate. OPSI appreciates the opportunity to provide these pre-conference comments and looks forward to the technical conference on July 23.

Respectfully Submitted,

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