UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

PRE-TECHNICAL CONFERENCE COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission (PA PUC) appreciates the Commission convening this technical conference and offers these comments in response to two questions[1] posed in the Commission's third notice and amended agenda.

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

The PA PUC supports greater engagement between the Board, individual state commissions, OPSI, and the Governors' Collaborative. OPSI's consensus voice can provide leadership to guide PJM through increasingly challenging policy debates. The Governors' Collaborative should be afforded a protocol allowing them the ability to propose problem statements and issue charges directly to the PJM Board of Managers, bypassing the need to receive supermajority support from PJM Members to initiate stakeholder processes on issues that are important to the states. This process would allow the PJM Board of Managers to decide whether state-sponsored issues should be elevated and advanced in the face of member opposition. Similarly, the Governors' Collaborative 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 important input and guidance to the PJM Board of Directors.

It is time to realign the PJM stakeholder process to elevate the voices of state commissions and state governments. When states collectively develop a consensus resource adequacy reform, they should have a clear pathway to put that proposal before FERC under Section 205 of the Federal Power Act. Today, states effectively must show that the *status quo* is unjust and unreasonable and use their resources in filing Section 206 complaints as litigants *in parens patriae* before their ideas can be considered. The same issue arises in transmission planning and cost allocation, particularly with large-load-driven upgrades. Utility commissions are neutral and independent regulatory bodies subject to ethical and financial disclosure requirements. Commissioners have terms of employment. State Commission employees and officials are divested of financial interest from the jurisdictional utilities that regulators regulate. Their decisions are made in open public meetings because of sunshine laws. States governments are

[1] For clarity, these comments are responsive to Potential Questions 2 and 3; however, they are consecutively numbered herein as 1 and 2.

accountable to their constituents. If the constituents are not satisfied with the public policy decisions of their State governments, they can vote for change. Both state Commissions and state governments are beholden to their ratepayers and constituents. Numerous critical policy choices that must be made to sustain a state's electric grid as well as ratepayer citizens' lives and livelihoods should not all be made by an RTO operating in an administrative *ex parte* stakeholder process that is not designed to balance public interests in the way that state commissioners bound to a public interest standard can.

PJM's current governance paradigm gives PJM member stakeholders outsize influence over which proposals reach the PJM Board of Managers. Moreover, given the PJM Board's lack of 205 filing rights over its own Operating Agreement, it appears the Board may not be truly independent from the stakeholders simply because of the process utilized to shepherd information to the Board, and as evidenced by recent Board member removals by dissatisfied voting blocs. The PA PUC is not a stakeholder as it has no vote in any of this process. It has no way to see the votes either. If states cannot meaningfully be heard in the process that culminates in those outcomes, determinations are made without the benefit of input from key stakeholders, and it becomes harder to move projects forward.

The tension we are seeing right now reflects the fact that PJM's governance structure was built for a different era. Today, with centralized capacity constructs, large load growth, reliability backstop auctions, connect and manage debates, and significant consumer impacts, challenges have dramatically transformed the reality of regional transmission in fundamental ways, and PJM must now evolve. RTOs should follow FERC orders, provide the technical analysis for operating wholesale electricity markets, and oversee the operation of the grid. When issues arise requiring operational or RTO rule changes, the RTO should transparently and clearly present the options, and then take input from stakeholders. States should provide input on policy direction on areas where jurisdiction is clear. If we align those roles more clearly, both sides will function more efficiently and the region will be better positioned to avoid scarcity of resources.

States and PJM can help each other most by staying within their respective lanes regarding planning. PJM runs complex markets and provides expert analysis. It should continue to provide rigorous analysis, lay out the options, and be transparent about tradeoffs. PJM is not delegated FERC authority as it is neither a regulatory body nor the long-arm of FERC. PJM's administrative planning decisions do not trump state decision-making made pursuant to state laws regarding the issuance of certificates of public convenience to public utilities, the permitting and siting of generation and transmission construction, and the condemnation of property within the state. Rather, PJM staff and the Board should consider State law early in its planning decisions. A consortium of for-profit entities/stakeholders cannot be permitted to undermine the resource planning responsibilities of the States, which stand *in parens patriae* to act as guardian protectors of their ratepayers, particularly those most vulnerable.

Some states rely on PJM and its processes to maintain resource adequacy; however, there is nothing that compels them to do so beyond their own laws and regulations. PJM practically ensures resource adequacy but the States hold the fundamental responsibility to ensure resource adequacy. PJM administers a capacity construct located in Attachment DD of the Tariff (Reliability Pricing Model (RPM)) and sets the values that inform RPM and Fixed Resource

Requirement (FRR) through the Reliability Assurance Agreement (RAA).

However, seven of PJM's member states, in whole or part, do not rely on RPM to maintain resource adequacy (FRR or self-supply). Further, there is nothing fundamental about states having to rely on their RTO to maintain resource adequacy. An example of this is in the SPP Bylaws at page 68, which provides in pertinent part as follows: "The RSC [OPSI equivalent] will also determine the approach for resource adequacy across the entire region." MISO manuals let states set their reserve margins that MISO has to use. In single state RTOs (CAISO and NYISO) the state has an active overseeing role in maintaining resource adequacy. And in non-RTO regions, there is no RTO at all to maintain resource adequacy. Reasonable reforms to the PJM governance and stakeholder process will allow PJM's stakeholders and Board to make more informed and durable decisions in a timely manner.

2. **What governance reforms would best improve accountability and responsiveness?**

States assign costs to customer classes and balance competing interests; however, in PJM, states have no formal role in resource adequacy or transmission planning decisions—even though those decisions have direct rate impacts on consumers in each of our jurisdictions. In Pennsylvania, a restructured state, increased prices at capacity auctions trickle down into the price to compare of the default service provider of generation supply. These prices and increased transmission rates have been raising the retail end-user's bills. States have a longstanding obligation to maintain resource adequacy, and to protect consumers from unreasonable rates for essential utility services. Using PJM's capacity market has simply been a more efficient way to carry out that responsibility for Pennsylvania, but it should not be interpreted to mean that by entering the regional construct, Pennsylvania surrendered its responsibility or authority.

Governance should make it easier for consensus state solutions to reach the Commission for consideration. RTOs are a creature of regulation, which is a creature of statute—specifically the Federal Power Act. There is nothing constitutional or inevitable about their existence. They exist because they provide efficiencies that states could not achieve as easily on their own.

Absent an RTO, states would oversee utilities procuring generation and expanding transmission to maintain reliability. That authority never disappeared. Legislation may have enabled reliance on RTOs, but legislation can also lessen reliance on RTOs. States chose to rely on regional constructs because they are more efficient—not because they surrendered oversight or accountability. The solution is not for RTOs to take on political accountability. It is to ensure that states have a formal, structured role within RTO stakeholder processes as proposals are developed and a clear path to get their ideas before FERC when the stakeholder processes does not function as intended.

The PA PUC also supports the Governors' Collaborative's proposal to appoint three members to the PJM Board Nominating Committee for defined terms to facilitate some independence from the Members and transparency to the public. Board member terms should be increased to facilitate independence and to limit the ability of voting stakeholders to influence decisions through the reappointment process. Furthermore, the voting threshold to remove a Board member should be increased beyond a simple majority. The Board should be given the independence from its stakeholders and be charged with a renewed duty to act solely on behalf of the common interest, not the private interest of any controlling member (of which there are approximately 1,146), while the stakeholder process is reformed.

In conclusion, these recommendations will serve to lessen the friction between the RTO and the States, will provide for more coordinated planning, and will allow the Board some independence from its stakeholder members. Increasing and refining state involvement will expedite solutions to the looming scarcity of resources problem by better informing the record relied upon by the PJM Board and ultimately the Commission to resolve issues and implement tariff changes. The PA PUC appreciates the opportunity to provide these pre-conference comments.

Respectfully Submitted,

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