PJM Interconnection, L.L.C. : Docket No. ER15-639-000 :

MOTION FOR LEAVE TO ANSWER AND ANSWER OF PJM INTERCONNECTION, L.L.C. TO EXELON PROTEST

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), PJM Interconnection, L.L.C. (“PJM”) respectfully moves for leave to answer and answers protests submitted by Exelon Corporation (“Exelon”) in response to PJM’s proposal to revise Schedule 6 of the PJM Amended and Restated Operating Agreement (“Operating Agreement” or “Schedule 6”) to (i) add an up-front, non-refundable fee of $30,000 to each greenfield project proposal submitted during a project proposal window to which the proposing entity is requesting Designated Entity status; and (ii) to each Transmission Owner Upgrade with estimated costs of $20 million or greater.

I. Motion for Leave to Answer

To the extent the Commission’s Rules of Practice and Procedure do not expressly authorize this answer, PJM respectfully requests leave to submit this response in order to aid the Commission’s decision-making process. The Commission frequently has accepted responses to protests when doing so will ensure a more accurate and complete record or will assist the

Commission in its deliberative process by correcting errors and clarifying the issues.\textsuperscript{4} Here, PJM’s answer should be permitted as it clarifies certain issues raised by the protestor and, therefore, provides a more complete record to assist the Commission in reaching its decision.

II. Answer

A. *Exelon’s Proposal to Add Exceptions to the Rule Should be Rejected.*

The proposal fee is intended to establish a reasonable collection mechanism that could be easily executed with minimal administrative oversight. In order to do so, the parties agreed that an upfront, non-refundable fee paid for by the entity proposing a project to be selected for inclusion in the RTEP for cost recovery would most likely realize that objective. To be fair to all proposers, PJM and its stakeholders agreed upon a $30,000 fee, finding that such amount struck a reasonable balance between being sufficient enough to encourage well-developed project proposals but modest enough not to discourage participation in the open window process. PJM and its stakeholders recognized that there would be times when the proposed $30,000 fee would be less than actual study costs and other times when the fee would exceed actual study costs for their project proposals. PJM and stakeholders were comfortable with a $30,000 fee, as it reflected the lower end of the middle range of costs using the data on hand. In general, PJM and its stakeholders expressed a preference for the one-time upfront, non-refundable fee, which provides greater certainty to proposers, as opposed to a collection mechanism that required a more significant initial fee to be trued up at the end of the study process. Of course, an “actual cost” approach would add a level of complexity far beyond that of a flat rate fee.

In its protest, Exelon objects that PJM’s fee proposal makes no provision for refunding fees -- even if shortly after posting a proposed violation PJM removes the violation.\(^5\) In support of its protest, Exelon points to an incident where after PJM listed potential violations for an open window, PJM determined that the model needed to be changed and withdrew the previously identified violation.\(^6\) Exelon seeks an exception provision to the fee proposal arguing that under such circumstances the $30,000 fee should be returned to the developer.\(^7\)

In Exelon’s example, no fees were collected at that time under the open window. Through lessons learned, PJM is reviewing such incidents and, when appropriate, adjusting its process to avoid such issues in future open windows.\(^8\) Nonetheless, Exelon’s example does not justify changing the fee proposal to allow for exceptions.

The justification for the upfront, non-refundable fee was that the collection mechanism would be easy to administer. Once we start peeling away at the proposal package and allow exceptions, we will require “breakpoints” and/or “criteria,” \(i.e.,\) measures we were trying to avoid under this proposal, -- none of which Exelon proposes in its protest.

In evaluating Exelon’s protest, PJM asks the Commission to keep in mind that PJM does not propose a fee process that purports to recover costs or return unused deposits down to the last dollar. Rather, PJM proposes an upfront, flat fee under a collection mechanism that should reasonably recover costs from the cost causers.

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\(^5\) Exelon Protest at 2.
\(^6\) Exelon Protest at 3, n. 10.
\(^7\) Of course, in situations where PJM finds that it made an error resulting in the removal of a violation from the posted list of violations, PJM would refund any fees associated with the withdrawn violation.
\(^8\) As a result of PJM’s lessons learned analysis, PJM has begun to identify violations on the posted list of violations that are tied to needs that are dependent on, for example, a generator that does not deactivate after it provides a notice to deactivate its generation unit. This approach will provide upfront notice to proposers that certain projects may not be needed if the generator does not deactivate as expected.
This filing proposes to minimize the administrative burden to PJM and encourage a robust competitive solicitation process. The $30,000 non-refundable fee was agreed to by PJM and its stakeholders through an extensive stakeholder process. The parties believed that such an amount was reasonable and would not act as barrier to entry. And, even though Exelon points out that there may be more than one way to encourage serious, well-reasoned project proposals, PJM and its stakeholders found that PJM’s proposal meets its objectives in a fair, nondiscriminatory manner. The Commission has long held that as long as the Commission finds a methodology to be just and reasonable, “[the Commission] need not address the merits of an alternative proposal.”

Key to the proposal is PJM’s commitment to keep records for a two year period that track analytical costs associated with the review of project proposals against the $30,000 fee. After two years, PJM and its stakeholders will review the data and consider whether adjustments to the fee process or amount are appropriate at that time. Certainly, Exelon’s proposed changes, not adopted by the stakeholders, are premature at best.

**B. Exelon’s Proposal to Use Categories of Upgrades to Determine Whether an Incumbent Transmission Owner Should be Required to Submit $30,000 Proposal Fee for Transmission Owner Upgrades of $20 Million or Greater Should be Rejected.**

As noted by PJM in its December 16 Filing, LS Power proposed an alternative motion at the November 2014 Members Committee to add a requirement that incumbent transmission owners must submit an upfront, non-refundable $30,000 fee for Transmission Owner Upgrade

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9 See Midwest Independent Transmission Sys. Operator, Inc. 133 FERC ¶ 61,221 at PP 206, 240 (Dec. 16, 2010) (“MVP Order”); Cities of Bethany v, FERC, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (utility needs to establish that its proposed rate is reasonable, not that it is superior to alternatives); Oxy USA, Inc. FERC, 64 F.3d 679, 692 (D.C. Cir. 1995) (under the Federal Power Act, as long as the Commission finds a methodology to be just and reasonable, that methodology “need not be the only reasonable methodology, or even the most accurate”); Louisville Gas & Elec. Co., 114 FERC ¶ 61,282, at P 29 (2006); see also Sw. Power Pool, Inc., 131 FERC ¶ 161,252 at P 124 (2010) (“[h]aving found SPP’s proposal just and reasonable, we need not address the merits of the alternative proposal.”).

10 December 16 Filing at 3.
proposals with costs estimated at $20 million or greater. In its protest, Exelon comments that PJM did not explain adequately the requirement that an incumbent transmission owner also submit a $30,000 fee. Exelon recommends that the Commission reject the portion of the proposal that would impose an automatic fee on all Transmission Owner Upgrades with estimated costs of $20 million or more.

The purpose of the fee proposal was to better allocate the additional costs of implementing Order No. 1000 while keeping the process simple. PJM urges the Commission to reject Exelon’s proposed modifications. First, Exelon’s proposed modification was not vetted or endorsed by any of the PJM stakeholder committees. In addition, Exelon failed to provide any support for its proposed change to the requirement that an incumbent transmission owner submit a $30,000 fee for certain Transmission Owner Upgrades. Adding another layer of complexity to whether the Transmission Owner Upgrade estimated at $20 million or greater should be required to submit a fee based on whether the project proposal will require any study, some study or a lot of study, will only complicate the process more and open the door for more challenges, particularly since PJM will not have those answers until it completes its study of the proposal. PJM urges the Commission to allow PJM to apply the fee as proposed. If, after two years, it is determined in the context of a stakeholder process that any of Exelon’s proposals have merit changes to the process can be considered at that time in the context of the stakeholder process.
III. Conclusion

For the reasons stated herein, the Commission is asked to reject Exelon’s arguments and proposed modifications and adopt PJM’s proposed revisions to Schedule 6 of the Operating Agreement as proposed in its December 16, Filing.

Respectfully submitted,

By: ___________________________
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Dated January 23, 2014
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Audubon, PA, this 23rd day of January, 2015.

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