



Review standards under sections 205 and 206 of the Federal Power Act have a direct effect on how proposed revisions to PJM’s governing documents are filed with, and reviewed by, the Federal Energy Regulatory Commission.

FERC Jurisdiction

Under the Federal Power Act (FPA), the Federal Energy Regulatory Commission (FERC) has jurisdiction over:

- The transmission of electric energy in interstate commerce
- The sale of electric energy at wholesale in interstate commerce
- Facilities for such transmission or sale of electric energy in interstate commerce

The Just and Reasonable Standard

The FPA also requires that all rates, terms and conditions of FERC-jurisdictional services and charges – as well as all rules and regulations affecting such rates, terms and conditions – be filed with FERC for approval and be deemed “just and reasonable” by the Commission prior to becoming effective.

Because PJM’s governing documents relate to the transmission and wholesale sale of electricity in interstate commerce, changes to PJM’s governing documents – the Operating Agreement, the Open Access Transmission Tariff and the Reliability Assurance Agreement – must be accepted by FERC.

Sections 205 and 206 of the FPA are the avenues through which a document containing or affecting a rate, term or condition of a FERC-jurisdictional service or charge that is on file with the Commission can be amended.

Section 205 Filings

In an FPA Section 205 filing, the public utility submits a new document containing or affecting a rate, term or condition of a FERC-jurisdictional service or charge to FERC for approval. The public utility can also propose to amend a document that is already on file and in effect with the Commission, such as a PJM governing document.

The public utility making the FPA Section 205 filing has the legal burden of demonstrating that the proposed document, or the proposed change to the document that is already on file and in effect with the Commission, is “just and reasonable.”

Key Points

- Rates, terms and conditions for transmitting or selling power in interstate commerce must be deemed “just and reasonable” and not unduly discriminatory or preferential by FERC.
- Amendments to PJM’s governing documents require approval by FERC.
- Sections 205 and 206 of the FPA are the avenues through which PJM’s governing documents can be amended.
- Public utilities filing under Section 205 have the legal burden of demonstrating that the proposal is “just and reasonable.”
- In a Section 206 filing, the complainant must show that the document currently on file is “unjust and unreasonable,” which is a significantly higher legal standard than under a Section 205 filing. FERC can also set a new rate, term or condition by initiating a 206 proceeding on its own.



Section 206 Filings

In an FPA Section 206 filing, a party files a complaint at FERC alleging that a document (or any part thereof) that is currently on file is unjust, unreasonable, unduly discriminatory or preferential. The Commission may also initiate an FPA Section 206 proceeding to determine the same on its own motion.

In an FPA Section 206 filing or proceeding, the complainant (or the Commission) has the legal burden of demonstrating that the document (or any part thereof) currently on file is “unjust and unreasonable,” which is a significantly higher legal standard than under an FPA Section 205 filing. Upon finding that the document is “unjust and unreasonable,” the Commission must set a replacement rate, term or condition that it deems “just and reasonable.”

Amending PJM Governing Documents

PJM’s FPA Section 205 filing authority over the Operating Agreement is conditioned upon approval by the Members Committee, while PJM has Section 205 filing authority over the Open Access Transmission Tariff (with the exception of certain provisions that are under the exclusive control of the PJM Transmission Owners) and over the Reliability Assurance Agreement (conditioned upon Board approval).

In certain instances, if the Members Committee votes against a proposed revision to the Operating Agreement, the PJM Board may decide that it is necessary to proceed and file the proposed revision with FERC. If this is the case, PJM must file the proposed revision to the Operating Agreement under Section 206 (instead of under FPA Section 205) and demonstrate that the existing Operating Agreement language at issue is “unjust and unreasonable,” and that the proposed language is “just and reasonable.”

June 19, 2020