UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Indiana Municipal Power Agency
and
City of Lawrenceburg, Indiana,
Complainants,

v.

PJM Interconnection, L.L.C.,
American Electric Power Service Corp.,
and

Lawrenceburg Power, LLC,
Respondents

Docket No. EL20-30-000

ANSWER OF PJM INTERCONNECTION, L.L.C.

PJM Interconnection, L.L.C. (“PJM”), pursuant to Rule 213 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, submits this Answer to the complaint filed by the Indiana Municipal Power Agency (“IMPA”) and the City of Lawrenceburg, Indiana (“City”) (collectively, “Complainants”) on March 6, 2020, against PJM, American Electric Power Service Corp. (“AEP”), and Lawrenceburg Power, LLC (“Lawrenceburg Power”). As shown in this Answer, the Commission should deny the Complaint with respect to PJM.

1 18 C.F.R. § 385.213.
2 Complaint and Petition for Declaratory Relief of the Indiana Municipal Power Agency and the City of Lawrenceburg, Indiana, Docket No. EL20-30-000 (Mar. 6, 2020) (“Complaint”).
I. EXECUTIVE SUMMARY

PJM takes no position on the retail service dispute between the City and Lawrenceburg Power. PJM opposes the Complaint, however, insofar as it attempts to “declare null and void” PJM’s Tariff provisions governing the level of transmission service provided by PJM—an argument Complainants advance even while they claim in the Complaint’s Introduction and Overview that they are “not asking the Commission to revise the PJM Tariff”

The Commission has exclusive jurisdiction over transmission service in interstate commerce, and Tariff provisions establishing the level of such service suffer from no defect of authority. As discussed below, precedent regarding station power makes clear that PJM’s Commission-jurisdictional Tariff properly determines the level of transmission service associated with the delivery of station power, even though states determine the presence and extent of any retail sale of station power. PJM has no involvement in the provision of retail service, and PJM therefore does not apply the Tariff provisions challenged by the Complaint to determine the existence or level of any

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3 Complaint at 6, 7 n. 11, 30.
4 PJM Interconnection L.L.C. Open Access Transmission Tariff (“Tariff”). All capitalized terms that are not otherwise defined herein shall have the same meaning as they are defined in the Tariff, the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., or the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region.
5 See PJM Tariff, Attachment K-Appendix, section 1.7.10(d).
6 Complaint at 7 (emphasis in original); see also id. at 28 (“the station power self-supply provisions of the PJM [T]ariff are void”), 30 (Tariff provisions are “void and unenforceable”).
7 See Niagara Mohawk Power Corp. v. FERC, 452 F.3d 822, 824 (D.C. Cir. 2006) (“FERC has jurisdiction over both the interstate transmission of electricity and the sale of electricity at wholesale in interstate commerce. States retain jurisdiction over retail sales of electricity and over local distribution facilities. Thus transmission occurs pursuant to FERC-approved tariffs; local distribution occurs under rates set by a state’s public service commission.”); Calpine Corp. v. FERC, 702 F.3d 41, 50 (D.C. Cir. 2012) (“Calpine Corp.”) (“While the regulation of transmission charges is undoubtedly within FERC’s jurisdiction, retail charges are not.”).
retail service. Indeed, the very cases cited by Complainants to support their assertion that the Tariff provisions are void make clear that state determinations concerning the level or existence of a retail sale are not constrained by the Commission’s determinations regarding the level of interstate transmission service. The Complaint even concedes that “IMPA recognizes the Commission’s right to regulate the rates, terms, and conditions of Commission-jurisdictional transmission service used to supply retail station power service,” but nonetheless requests that the Commission declare the Tariff’s monthly netting provisions for station power “null and void and unenforceable” as outside the Commission’s authority.

PJM’s Tariff provisions on transmission service therefore are properly authorized, regardless of whether a state (or one of its municipal instrumentalities) reaches its own determination on any retail service taken by any customer. As a result, there is no basis for the Commission to declare the Tariff “null and void” as Complainants request.

At bottom, to the extent the Complaint seeks a finding that the Tariff is “null and void” as a matter of law, the Complaint substantially overreaches and itself ignores the clear jurisdictional divide set by Congress. The transmission and end-use sale aspects of station power service are discrete services that are under the exclusive jurisdiction of the Commission (the transmission service) and the state instrumentality (the end-use sale service), respectively. Complainants’ argument at essence appears to blur those lines and thus over-argues their point. PJM therefore asks that the Commission reject the

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8 Nor do Complainants contend that PJM or the Tariff has prevented them from determining and assessing retail charges on Lawrenceburg Power.

9 Complaint at 7 n.10.

10 Id. at 30.
Complaint’s request to declare Tariff, Attachment K-Appendix, section 1.7.10(d) unenforceable, and deny the Complaint as to PJM.

II. BACKGROUND

The Complaint explains that Complainants are engaged in an ongoing dispute with Lawrenceburg Power regarding the City’s retail service to the Plant for on-site electric consumption. As noted above, PJM takes no position on that dispute; the Tariff does not control the City’s determination of its retail charges to Lawrenceburg Power.11

Despite the Complaint’s repeated references to retail service, however, the Complaint—at least as directed against PJM—is about transmission service, and not retail service. The Complaint alleges that PJM has taken actions “in furtherance of” the Complaint’s characterization of Lawrenceburg Power’s position as to the retail service it is taking from the City.12 But the only “action” Complainants cite in that regard is their “object[ion] to PJM’s failure to provide IMPA the wholesale electricity and agreed-upon network transmission service necessary to deliver wholesale power to the City at the Plant in order for the City to serve the Plant’s station power needs.”13 Complainants present that objection even while acknowledging, “the Commission’s right to regulate the rates, terms, and conditions of Commission-jurisdictional transmission service used to supply retail station power service.”14

In other words, the Complaint asks the Commission to change the determination of transmission service under the Tariff so that it equals the City’s separate determination

11 See infra note 7.
12 Complaint at 3.
13 Id. at 7 n.10.
14 Id.
of retail service under state and municipal law, and to do so retroactively. The Complaint makes this clear in its request for relief, asking the Commission to “order and direct PJM to provide IMPA wholesale electric and network transmission service for the supply and transmission of power to its designated network load at the Lawrenceburg Plant delivery point as of January 1, 2019, and thereafter.”15

In practical terms, it appears that Complainants want transmission service to the Plant to be determined without the Tariff’s current monthly netting rule. They apparently seek to rely on the data on metered deliveries to the Plant since January 1, 2019, but use that data to make a revised calculation of transmission service to the Plant that ignores monthly netting and instead re-characterizes PJM’s transmission service to match the City’s calculation of its retail service to the Plant. Given that application of the monthly netting rule has largely eliminated transmission service to the Plant since January 1, 2019, Complainants’ requested approach would seemingly increase the deemed transmission service to the Plant, and route charges for that service in some fashion through IMPA’s network service agreement with PJM.

Moreover, neither the Tariff, nor PJM’s actions in accordance with the Tariff, can be read to thwart the provision of transmission service under IMPA’s network service agreement. AEP, as the Transmission Owner, controls the submission of all metered real-time megawatt hour (“MWh”) values to PJM for both the Plant and the load served by IMPA. Prior to initiation of the contractual dispute underlying the Complaint, AEP reported station power MWh values from the Plant to PJM as load served by IMPA. Lawrenceburg Power was then presumably charged a resulting retail rate for station

15 Complaint at 30-31.
power. At Lawrenceburg Power’s request, AEP ceased reporting station power MWh values as load served by IMPA, and instead began reporting station power MWh values to PJM as negative generation for Lawrenceburg Power.

Notably, both of those reporting conventions are compatible with the Tariff provision on determination of transmission service, and turn on whether the MWh values are reported as “negative generation.” Specifically, the PJM Manual that provides implementing details on application of this Tariff provision expressly acknowledges that “[i]f a superseding arrangement for the treatment of station power exists between a generation owner and the applicable electric distribution company (EDC) in whose service territory the generator resides, then net station power consumption (i.e., negative net generation MW) is not reported to PJM for settlements purposes.”16 In such a case, “compensation for station power consumption is handled bilaterally between the EDCs and generation owners and PJM billing adjustments for station power are not applicable.”17 This optionality underscores that the Tariff is not dictating IMPA’s retail service, and is not exceeding the bounds of Commission jurisdiction.

Therefore, the Complaint appears ultimately directed only at the reporting or characterization of metered data, even while IMPA concedes it is not contesting the accuracy of the metered data as reported to PJM.18 But PJM does not calculate or report metered MWh values for settlement purposes. Because PJM took no action with respect to the reporting of station power from the Plant, it cannot be acting in “contravention” of

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17 Id.

18 See Complaint at 17 n.54.
its obligations under Federal Power Act ("FPA"), section 306.\textsuperscript{19} The Complaint with respect to PJM should therefore be dismissed.

III. ANSWER

A. LJ\textsuperscript{M} Does Not Provide or Determine Retail Service.

PJM does not provide retail service, and PJM does not determine whether a customer is taking retail service, or the amount of such retail service.\textsuperscript{20} PJM does not apply Tariff, Attachment K-Appendix, section 1.7.10(d) to determine or define any retail service, and is not responsible for third-party interpretations of the Tariff.

B. Precedent Is Clear that the Commission May Determine Station Power for Transmission Service Differently Than a State Determines Station Power for Retail Service.

The Complaint cites a number of cases for the proposition that Commission-approved station power rules cannot determine whether a retail sale occurs, or the extent of such retail sale.\textsuperscript{21} But those same cases also make clear that the Commission can employ station power rules to determine the level of transmission service even if the Commission-authorized transmission service determination differs from the state-authorized retail determination.

Thus, in \textit{SoCalEd}, the court described the precise issue it was deciding as \textquotedblleft stark,

\footnotesize{\begin{itemize}
  \item \textsuperscript{19}See id. at 18 & n.61 (citing FPA, section 306, 16 U.S.C. § 825e).
  \item \textsuperscript{20}PJM has extensive involvement in jurisdictional demand response in its markets, but that is not at issue here, and likewise does not involve PJM determining whether a third party is providing retail service under state law. \textit{See FERC v. Elec. Power Supply Ass’n}, 577 U.S. 1 (2016); \textit{see also} Tariff, Attachment K-Appendix, sections 1.5A, 8.1 (participation requirements for Economic Load Response Participants and Emergency Load Response Participants, respectively); \textit{Id.}, Attachment DD-1 (eligibility requirements for Demand Resources ).
\end{itemize}
period it approved to calculate energy delivered to and taken from the grid by generators for transmission charges must also govern charges the utilities seek to impose for the generator’s own use of power.”22 The court held FERC did not have that jurisdiction, explaining that “[u]nless a transaction falls within FERC’s wholesale or transmission authority, it doesn’t matter how FERC characterizes it.”23 Moreover, the court expressly rejected arguments that differing state and federal approaches to station power would result in a conflict that would implicate the federal preemption doctrine, explaining that “[i]t is, of course, true that under differing netting periods FERC can conclude that no transmission for station power took place in a month in which California would recognize retail sales of that power, but that is hardly a conflict.”24 The court noted that “in an unbundled market, transmission and power are procured through separate transactions;” and that, in a prior case, the court had found that “the netting periods for power and transmission need not be the same.”25

Similarly, as the Commission recognized in Duke Energy, “the Commission and the states can use different methods, with the Commission determining the amount of station power that is transmitted on the interstate transmission grid and the states determining the amount of station power that is sold in state-jurisdictional retail energy sales.”26

As shown above, PJM in this case is not, to paraphrase SoCalEd, “insisting that the netting period it approved to calculate energy delivered to and taken from the grid by

22 SoCalEd at 999 (emphasis added).
23 Id at 1001.
24 Id. at 1002.
25 Id. (citing Niagara Mohawk Power, 452 F.3d at 830).
generators for transmission charges must also govern charges the [City] seek[s] to impose for the generator’s own use of power.”27 Instead, this is a case, just as contemplated in SoCalEd, where “under differing netting periods FERC can conclude that no transmission for station power took place in a month in which [the City] would recognize retail sales of that power.”28

Here, PJM does not seek to impose the Tariff’s determination of station power for transmission service on the City’s determination of station power for retail service. As made clear above, PJM takes no position on the dispute between Complainants and Lawrenceburg Power concerning whether the Plant is taking retail service from the City (or the amount of such retail service).

Accordingly, the Tariff provisions on transmission service are not ultra vires. Nor, contrary to the Complaint,29 is application of the filed Tariff contrary to PJM’s Network Integration Transmission Service Agreement with PJM—that agreement expressly provides that it is subject to the rates, terms, and conditions in the Tariff.30

Because there is no claim that Tariff, Attachment K-Appendix, section 1.7.10(d)’s application to transmission service is ultra vires, the Complaint provides no basis for the Commission to declare that section’s determination of transmission service “null, void, and unenforceable.” Nor, for the same reason, does the Complaint provide any basis for

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27 SoCalEd at 999 (emphasis added).
28 Id. at 1002.
29 Complaint at 18-19.
the Commission to direct PJM to provide transmission service to the Plant since January 1, 2019, differently than prescribed by the Tariff in effect during that time period.

IV. ADMISSIONS AND DENIALS PURSUANT TO 18 C.F.R. § 385.213(c)(2)(i)

Pursuant to Rule 213(c)(2)(i) of the Commission’s rules of Practice and Procedure, PJM affirms that any allegation in the Complaint that is not specifically and expressly admitted above is denied.

V. AFFIRMATIVE DEFENSES PURSUANT TO 18 C.F.R. § 385.213(c)(2)(ii)

PJM’s affirmative defenses are set forth above in this Answer.

VI. COMMUNICATIONS AND SERVICE

PJM requests that the Commission place the following individuals on the official service list for this proceeding:

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31 18 C.F.R. § 385.213(c)(2)(i).

32 To the extent necessary, PJM requests a waiver of Commission Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3), to permit more than two persons to be listed on the official service list for this proceeding.
VII. CONCLUSION

For the reasons set forth in this Answer, the Commission should deny the Complaint as to PJM, and should specifically reject Complainants’ request that the Commission declare the Tariff “null and void and unenforceable,” and Complainants’ request that PJM be directed to revise its transmission service determinations regarding deliveries to the Plant from January 1, 2019.

Respectfully submitted,

/s/ Paul M. Flynn

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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 Washington, D.C., this 1st day of May 2020.

/s/ Elizabeth P. Trinkle
Elizabeth P. Trinkle

Attorney for PJM Interconnection, L.L.C.