

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.) Docket No. EL21-91-003

**SUPPLEMENT TO MOTION TO AMEND
PROTECTIVE ORDER**

In accordance with the Presiding Judge’s Order Denying Request to Shorten Response Period, Establishing Response Period, and Scheduling Oral Argument,¹ PJM Interconnection, L.L.C. (“PJM”), hereby supplements the Unopposed Motion to Amended Protective Order filed October 12, 2023 in the above-captioned proceeding (“Motion to Amend”).² As detailed below, PJM complied with its duty to confer with opposing counsel in accordance with Section 3 of the Uniform Hearing Rules consistent with the Presiding Judge’s instructions at the pre-hearing conference. The Amended Protective Order³ was the product of multiple rounds of comments and compromise between the participants to narrow areas of disagreement.⁴ In addition, as explained more fully below, PJM’s proposed amendments to the protective order are appropriate in light of the subject matter of this proceeding and the discovery to date. PJM respectfully requests that the Presiding Judge adopt the proposed amendments to the Protective Order.

¹ *PJM Interconnection, L.L.C.*, Order of Denying Request to Shorten Response Period, Establishing Response Period, and Scheduling Oral Argument, Docket No. EL21-91-003, at P 14 (Oct. 16, 2023) (“Oct. 16 Order”).

² *PJM Interconnection, L.L.C.*, Unopposed Motion to Amend of Protective Order, Docket No. EL21-91-003 (Oct. 12, 2023).

³ See Motion to Amend at Attachment A.

⁴ See Attachment A (Communications Log Regarding Motion to Amend Protective Order).

I. BACKGROUND

Black Start Service is the ability for a unit to start generating electricity without power provided by the grid.⁵ PJM uses Black Start Service to restore the Bulk Power System after a system blackout event.⁶ PJM selects units to provide Black Start Service through a competitive request for proposal (“RFP”) process.⁷ PJM has an RFP process for Black Start Service ongoing currently.

Through this competitive process, units are selected to provide Black Start Service for specified period of time and are compensated based on cost of service rates.⁸ PJM’s Open Access Transmission Tariff (“Tariff”), Schedule 6A allows units to either opt to be compensated under a unit-specific rate (that is filed with and approved by the Commission) or a generic rate calculated pursuant to the Tariff.⁹ For those units being compensated under the generic rate, the Black Start Service rate is comprised of four components: fixed costs (Fixed Black Start Service Costs, or Fixed BSSC), variable costs, training costs, and fuel storage costs.¹⁰ This proceeding concerns a component of the generic rate, the Fixed Black Start Service costs for unit recovering incremental capital to provide Black Start Service.

Prior to June 2021, PJM calculated the fixed costs for Black Start Units in one of two ways.¹¹ First, the unit could opt to recover any new or incremental capital costs

⁵ *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,080, at P 3 n.3 (2021).

⁶ *Id.* at P 3.

⁷ *Id.* at P 4.

⁸ *Id.* at PP 3-4.

⁹ *Id.* at P 4.

¹⁰ *Id.*

¹¹ *Id.*

incurred to enable the unit to provide Black Start Service, in which case those costs were multiplied by a Capital Recovery Factor (“CRF”) that was stated in the Tariff.¹² Alternatively, if a unit owner opted not to recover incremental capital costs, the unit’s fixed costs were determined by the Base Formula Rate.¹³ Starting in June 2021, PJM replaced the fixed CRF with a formula rate that is updated annually to calculate the fixed costs for Black Start Services.¹⁴ Thus, the fixed CRF rate is only utilized by Black Start Units that were selected prior to June 2021 and opted to recover incremental capital costs.¹⁵

As discussed in the Motion to Amend,¹⁶ the Commission initiated this proceeding to investigate whether PJM’s existing rates for certain units providing Black Start Service¹⁷ remain just and reasonable (i.e., the rates for units selected to provide Black Start Service prior to PJM’s adoption of a formula rate in 2021).¹⁸ The procedural history for this proceeding is described in the Motion to Amend.¹⁹ As relevant here, the Chief Judge terminated settlement discussions, designated a presiding administrative law judge, and set this proceeding for a track III procedural schedule on August 25, 2023.²⁰ Because a presiding administrative law judge was designated, formal discovery in this proceeding

¹² *Id.*

¹³ *Id.* at P 4 n.8.

¹⁴ *See id.* at P 1.

¹⁵ *Id.* at PP 1, 4.

¹⁶ Motion to Amend at 1.

¹⁷ Capitalized terms used, but not defined, in this motion have the meaning set forth in PJM’s Open Access Transmission Tariff.

¹⁸ *See PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,080, at PP 1-2 (2021).

¹⁹ Motion to Amend at 1-2.

²⁰ *PJM Interconnection, L.L.C.*, Order of Chief Judge Terminating Settlement Judge Procedures, Designating Presiding Administrative Law Judge, and Establishing Track III Procedural Time Standards, Docket Nos. EL21-91-000, -003 (Aug. 25, 2023).

began in accordance with section 2(a)(1) of the Uniform Hearing Rules.²¹ At that time (and currently) the protective order in this proceeding follows the model protective order with only minor modifications to remove provisions applicable only to oil pipeline proceedings.²² In other words, the protective order provides for only one level of confidentiality that is available to anyone that signs a non-disclosure certificate in the proceeding.²³

On August 31, 2023, Commission Trial Staff served PJM with its First Set of Data Requests.²⁴ Among other things, Commission Trial Staff's First Set of Requests to PJM requested a list of all Black Start Units that use the pre-June 2021 CRFs, the payments made to each unit for Black Start Service since 2017, and the incremental capital costs for each Black Start Unit.²⁵ On September 13, 2023, Commission Trial Staff served its Second Set of Data Requests on PJM.²⁶ On September 20, 2023, PJM responded to all of the requests in Commission Trial Staff's First Set of Requests except for two requests that called for the list of all the Black Start Units using the pre-2021 CRF and the individual capital costs for those units.²⁷ PJM objected to providing the list of Black Start Units and

²¹ See Office of Administrative Law Judge, *Uniform Hearing Rules*, Federal Energy Regulatory Commission, 1 (Jan. 5, 2022), https://cms.ferc.gov/sites/default/files/2022-03/Uniform%20Rules_Updated_FINAL_1.5.2022.pdf ("Uniform Hearing Rules").

²² *PJM Interconnection, L.L.C.*, Unopposed Motion for Adoption of Protective Order, Docket No. EL21-91-000 (May 16, 2023); *PJM Interconnection, L.L.C.*, Order of Chief Judge Adopting Protective Order, Docket No. EL21-91-000 (May 22, 2023).

²³ See generally *PJM Interconnection, L.L.C.*, Order of Chief Judge Adopting Protective Order, Docket No. EL21-91-000 (May 22, 2023).

²⁴ See Attachment B (Commission Trial Staff First Set of Data Requests to PJM).

²⁵ *Id.* at 6 (Requests 1.5 and 1.6).

²⁶ See Attachment C (Commission Trial Staff Second Set of Data Requests to PJM).

²⁷ See Attachment D (PJM Responses to Commission Trial Staff's First Set of Data Requests).

individualized capital costs because the information is CEII,²⁸ and the existing protective order did not have a mechanism to restrict access to competitively sensitive information (such as individualized cost data) between participants.²⁹ Also on September 20, 2023, PJM also served objections to Commission Trial Staff's Second Set of Data Requests that objected to certain requests on the same ground (i.e., because the request called for highly sensitive CEII and individualized Black Start Unit cost information that was not adequately protected under the existing protective order).³⁰

On September 22, 2023, PJM met and conferred with Commission Trial Staff regarding PJM's objections to providing the requested information. During that discussion, PJM explained that it objected to producing the requested information to Commission Trial Staff until an amended protective order was adopted in this proceeding

²⁸ The Commission's regulations define CEII as

specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

- (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
- (ii) Could be useful to a person in planning an attack on critical infrastructure;
- (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and
- (iv) Does not simply give the general location of the critical infrastructure.

18 C.F.R. § 388.113(c)(2). A list of the current Black Start Units in PJM meets this definition. Black Start Units comprise the units needed to restart grid operations in PJM, which constitutes vulnerability or detailed design information of existing critical infrastructure. Moreover, this information relates to the transmission of energy, could be useful to a person planning an attack on critical infrastructure, and is exempt from public disclosure under the Freedom of Information Act. *See* 18 C.F.R. § 388.113(c)(1) ("Critical Electric Infrastructure Information is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(3) and shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision or tribal law requiring public disclosure of information or records pursuant to section 215A(d)(1)(A) and (B) of the Federal Power Act.").

²⁹ Attachment D at Responses to S-PJM 1.5-1.6.

³⁰ Attachment E (PJM Objections to Commission Trial Staff's Second Set of Data Requests) at 7-8 (objecting to responding to S-PJM-2.2 requesting a description of each Black Start Unit, including capacity, age, location and ownership).

because the existing protective order did not contain adequate provisions to protect competitively sensitive information between participants and certain participants had requested responses to the data requests pursuant to Rule 406(b)(4) of the Commission’s Rules of Practice and Procedure.³¹ In addition, PJM expressed concerns about whether the existing protections for CEII were sufficient given the sensitive nature of the CEII requested (i.e., a detailed list of the Black Start Units needed to restart grid operations after a blackout event). Commission Trial Staff agreed verbally and then confirmed in writing that it would not further disseminate PJM’s responses to Commission Trial Staff’s data requests while PJM sought to amend the protective order to include additional protections. Accordingly, PJM produced the relevant responses to Commission Trial Staff the same day.³²

On October 3, 2023, PJM circulated a draft motion to amend the protective order and amended protective order to all participants in this proceeding on the Commission’s official service list.³³ In response to feedback on the draft, PJM had multiple discussions and other communications with a number of participants to narrow areas of disagreement.³⁴ After multiple rounds of edits and concessions among the parties, no participant expressed that it would oppose the motion. Accordingly, PJM filed the Motion to Amend as unopposed.

³¹ 18 C.F.R. §385.406(b)(4) (“Responses to discovery requests are required to be served only on the participant requesting the information, Commission trial staff, *and any other participant that specifically requests service.*” (emphasis added)).

³² Attachment F (Email from S. Pincus to J. Janicke providing responses to S-PJM 1.5 and S-PJM 1.6).

³³ See Attachment A.

³⁴ See *id.*

II. DISCUSSION

A. PJM Complied with Section 3 of the Uniform Hearing Rules.

Section 3 of the Uniform Hearing Rules requires participants to confer on all non-dispositive motions to determine whether the requested relief is opposed and narrow areas of disagreement.³⁵ Section 3(b) then requires all motions to “state whether they are opposed or unopposed and, if opposed, the motion must explain the efforts made to resolve the dispute.”³⁶ As explained in more detail on Attachment A, PJM conferred with all participants including Commission Trial Staff regarding the Motion to Amend and ultimately resolved all areas of disagreement expressed by other participants.³⁷ Accordingly, PJM stated that the Motion to Amend was unopposed in accordance with the requirements of Section 3(b) of the Uniform Hearing Rules.

B. The Proposed Amendments to the Protective Order for CEII are Appropriate.

PJM proposed amendments to the protective order to incorporate its existing process for the protection of CEII. These changes are consistent with the Commission’s regulations and the approach taken in a prior complaint proceeding involving CEII. The Commission’s regulations contemplate that when a person files CEII “in a complaint proceeding or other proceeding to which a right to intervention exists, that person must include a proposed form of protective agreement with the filing, or identify a protective

³⁵ Uniform Hearing Rules at 4.

³⁶ *Id.*

³⁷ Although PJM circulated the draft Motion to Amend and the Amended Protective Order to all individuals on the Commission’s official service list for this proceeding, PJM only received responses (either in support or opposition) from a handful of participants. PJM believes that participants had ample opportunity to express any opposition to the Motion to Amend during the consultation process. Nonetheless, out of an abundance of caution, PJM moved to shorten the answer period instead of eliminate it entirely to provide a final opportunity to express any opposition.

agreement that has already been filed in the proceeding that applies to the filed material.”³⁸ The Commission’s regulations then contemplate that an entity that moves to intervene in such proceeding may make a written request for the filed CEII materials and obtain copies of the materials after executing the requisite NDA.³⁹ Due to the procedural posture of this proceeding (i.e., a complaint proceeding initiated by the Commission in which discovery is ongoing and PJM has not filed any CEII), it is unclear this regulation applies and no such NDA has been filed. PJM therefore sought to amend the protective order to incorporate its standard procedure for accessing CEII as provided in PJM Manual 14B.⁴⁰ PJM’s CEII access process largely mirrors the Commission’s process for granting access to CEII (e.g., PJM requires the submission of a written request for access, an assessment of need for the CEII, and then disclosure of the CEII pursuant to an NDA).⁴¹

PJM’s proposed approach is also consistent with that taken in a prior complaint against PJM involving CEII.⁴² *TranSource LLC v. PJM Interconnection LLC* involved a complaint against PJM alleging a lack of transparency in evaluating TranSource LLC’s position in PJM’s transmission cue process.⁴³ After the matter was set for hearing, TranSource LLC filed an unopposed motion to adopt a protective order that both included a category for “highly sensitive” materials (i.e., market-sensitive information) and protections for CEII consistent with PJM’s standard procedures.⁴⁴ The presiding

³⁸ 18 C.F.R. § 388.113(d)(1)(iii).

³⁹ 18 C.F.R. § 388.113(g)(4).

⁴⁰ See Motion to Amend, Attachment A, at P 9(i)(b).

⁴¹ See, compare Manual 14B section 1A.3 with 18 C.F.R. § 388.113(g)(5).

⁴² PJM cited to this precedent in the Motion to Amend. See Motion to Amend at 3 n.10.

⁴³ See *TranSource LLC v. PJM Interconnection LLC*, Notice of Complaint, Docket No. EL15-79-000 (June 24, 2015).

⁴⁴ *TranSource LLC v. PJM Interconnection LLC*, Motion for Adoption of Protective Order, Docket No. EL15-79, at Protective Order P 9(a), (Aug. 23, 2016) (“Notwithstanding the foregoing proviso, no Reviewing

administrative law judge granted the motion and adopted the protective order.⁴⁵ Thus, the proposed amendments to the protective order are consistent with the Commission's regulations and the approach in a prior complaint proceeding against PJM.

Moreover, these amendments will not unduly allow PJM or other participants to refuse discovery based on PJM's CEII rules. Because certain participants expressed concerns that PJM would refuse access to materials sought in discovery by finding that the participant does not have sufficient need for such information, PJM added a stipulation as to need in the proposed Amended Protective Order regarding CEII sought in discovery by participants in this proceeding.⁴⁶

C. The Proposed Amendments to the Protective Order for Highly Confidential Materials are Appropriate.

As explained above, PJM selects units to provide Black Start Service via a competitive solicitation process. Accordingly, market participants knowing the details of what units currently provide the service and the payments made to those units to date would provide generators competing to be selected for Black Start Service a competitive advantage in preparing their proposals. To prevent this, PJM proposed to amend the protective order to add a new category of protected information that would prohibit competitive duty personnel from accessing such competitively sensitive information via

Representative shall be permitted access to CEII obtained from PJM in this proceeding unless the Reviewing Representative first submits the required CEII request form (available at: <http://www.pjm.com/documents/ferc-manuals/ceii/form-ceii-request.aspx>) and executes the CEII Non-Disclosure Agreement in the form posted on the PJM website (available at: <http://pjm.com/documents/ferc-manuals/ceii/form-ceii-nda.aspx>).”).

⁴⁵ *TranSource LLC v. PJM Interconnection LLC*, Order Adopting Protective Order and Protective Order, Docket No. EL15-79-001, at P 9(a) (Aug. 29, 2016).

⁴⁶ See Motion to Amend, Attachment A, at P 9(i)(b) (“For the purposes of requesting access to CEII from PJM, PJM stipulates that all Reviewing Representatives as defined in paragraph 3(G)(i)-(vi) have a need to access CEII that is properly subject to discovery the above-captioned proceeding.”).

the discovery process. As noted in the Motion to Amend, including such protections are consistent with protective orders adopted in other proceedings that dealt with competitively sensitive information being exchanged between participants in the same market.⁴⁷ PJM's Independent Market Monitor was fully supportive of including these provisions to guard against any participant gaining an unfair competitive advantage.⁴⁸

D. PJM's Other Revisions to the Protective Order Are Appropriate.

PJM proposed the remaining changes to the protective order to either implement the additional level of confidentiality for competitively sensitive information or as the result of feedback from the meet and confer process between the participants. These changes include:

1. Changing "Privileged" to "Confidential Protected Materials"

PJM proposed to use the terms "Confidential Protected Materials" and "Highly Confidential Protected Materials" to establish different levels of confidentiality for information that is competitively sensitive between participants in this proceeding. The term "Privileged" in the Commission's regulations encompasses all information that is exempt from public disclosure under the Freedom of Information Act except CEII.⁴⁹ Therefore, both "Confidential Protected Materials" and "Highly Confidential Protected Materials" would be handled as privileged when filed with the Commission. This

⁴⁷ Motion to Amend at 3 n.10 (citing *Hudson Transmission Partners, LLC v. N.Y. Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,022, Protective Order at P 9 (2014) ("[W]e recognize that NYISO and market participants have a legitimate interest in keeping competitively sensitive information and NYISO's market monitoring and mitigation processes confidential."); *Astoria Generating Co. v. N.Y. Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,155, Protective Order at P 9 (2011).).

⁴⁸ See Attachment A.

⁴⁹ See 18 C.F.R. § 388.112(a) ("For the purposes of the Commission's filing requirements, non-CEII subject to an outstanding claim of exemption from disclosure under FOIA will be referred to as privileged material. The rules governing CEII are contained in § 388.113.").

terminology is also consistent with the language used in a protective order in recent PJM complaint proceedings involving competitively sensitive information.⁵⁰ This terminology is also consistent with the Commission’s document labeling guidance for documents submitted to the Commission which contemplates labeling information subject to a protective order.⁵¹

2. Reference to Section 18.17 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.

PJM proposed to add language referencing section 18.17 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”) because this proceeding already involves information designated confidential pursuant to section 18.17 of the Operating Agreement. Operating Agreement, section 18.17 protects Member information from disclosure except under very limited circumstances, with such circumstances often requiring additional protections to ensure confidentiality notwithstanding the limited disclosure. As relevant here, Operating Agreement, section 18.17.2(a) permits PJM “to disclose to third parties, information that is otherwise required to be maintained in confidence pursuant to this [Operating] Agreement” if required to do so “by applicable law, order, or in the course of administrative or judicial proceedings.” PJM included language in the Amended Protective Order to explicitly provide that:

Participants disclosing such information in accordance with the terms of this Amended Protective Order will be deemed to not have contravened the prohibitions of this Operating Agreement

⁵⁰ See *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, Order of Chief Judge Adopting Protective Order, Docket Nos. EL23-53-000, et al. (not consolidated) (June 14, 2023).

⁵¹ *Notice of Document Labelling Guidance or Documents Submitted to or Filed with the Commission or Commission Staff*, 82 Fed. Reg. 18,632 (Apr. 20, 2017) (“Documents containing multiple information types, should reference each information type in a top center header of each page of the document in the following format: CUI/[Information Type]/[Additional Information Type], e.g., CUI//CEII/PRIV.”); *id.* (“For information that is privileged or within the scope of a protective order or agreement, filers are reminded that they also need to clearly identify within the document those specific portions of the document (i.e., lines or individual words or numbers) – containing such material.” (citing 18 C.F.R. § 388.112(b))).

provision, including without limitation the disclosure and notification requirements of Operating Agreement, Section 18.17.2, and in the event of any conflict with such Operating Agreement provisions, such provisions shall be deemed waived by this Amended Protective Order, for good cause shown and solely as and to the extent such information is provided under and governed by the terms of this Amended Protective Order.

Including this provision will help avoid any concerns that providing confidential information pursuant to the protective agreement is inconsistent with the notice and objection provisions of Operating Agreement, section 18.17.

3. Superseding Prior Agreements

PJM added language in paragraph 19 of the Amended Protective Order to specify that the Amended Protective Order supersedes and replaces the prior Protective Order issued May 22, 2023, and any protective agreements between the Participants in this proceeding. As explained above, PJM provided Commission Trial Staff with discovery responses containing CEII and information that is competitively sensitive between participants in this proceeding subject to Commission Trial Staff's Agreement not to further disseminate that information while PJM worked to amend the protective order.⁵² Therefore, PJM included language to clarify that the Amended Protective Order would supersede that agreement.

⁵² See Attachment F.

III. CONCLUSION

WHEREFORE, PJM respectfully requests that the Presiding Judge grant the Motion to Amend in light of the foregoing supplemental information and adopt the Amended Protective Order.

Respectfully submitted,

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October 20, 2023

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ATTACHMENT A

Communications Log Regarding Motion to Amend Protective Order

Attachment A: Communications Log Regarding Motion to Amend Protective Order

Date	Time	Communication Summary
10/3/2023	1:21 PM	Counsel for PJM circulates a draft motion to amend the protective order and draft amended protective order to all parties on the Commission’s service list, plus additional representatives of Commission Trial Staff. PJM requests that counsel respond to indicate any opposition to the motion by COB the following day.
10/4/23	2:23 PM	Commission Trial Staff responds that it takes no position on the motion.
10/4/2023	3:56 PM	Counsel for Vistra Corp. And Dynegey Marketing and Trade LLC (“Vistra”) responds that Vistra has been reviewing the draft motion and have some questions and asks to discuss it.
10/4/2023	4:03 PM	Counsel for American Municipal Power, Inc. (“AMP”) responds to PJM’s draft with proposed revisions, noting that if PJM accepts the proposed revisions AMP will not oppose the motion.
10/4/23	4:12 PM	Counsel for Old Dominion Electric Cooperative (“ODEC”) responds that ODEC has not had time to review the draft motion, but that it would review and provide ODEC’s position before the prehearing conference.
10/4/23	4:12 PM	Counsel for the Independent Market Monitor (“IMM”) responds that it supports PJM’s proposed changes to the protective order. The IMM states that the changes proposed by AMP are also acceptable.
10/4/23	4:38 PM	Counsel for PJM responds to counsel for Vistra that PJM is happy to discuss the draft protective order in person at the prehearing conference, time permitting.
10/4/23	5:53 PM	Counsel for PJM responds to AMP’s proposed revisions agreeing to the revisions with respect to attorney-client privileged materials, but disagreeing regarding AMP’s proposed revisions regarding access to Critical Energy Infrastructure Information (“CEII”).
10/5/23	9:37 AM	Counsel for the Delaware DPA responds to counsel for PJM noting support for AMP’s opposition with respect to the proposed revisions to the CEII provisions.
10/5/23		PJM’s counsel confers with counsel for ODEC and other participants at the prehearing conference regarding the proposed amended protective order.
10/6/23	10:49 AM	PJM’s counsel emails all participants regarding hosting a conference call on Monday, October 9, 2023 to discuss any remaining opposition to the proposed protective order.
10/6/23	11:53 AM	Commission Trial Staff responds that Trial Staff is unable to participate in the call on 10/9/23, but if a new draft

		comes out of the call, Trial Staff should be in a position to review and provide input on Tuesday. Commission Trial Staff stated it had no input on the draft already distributed.
10/9/23	9:30 AM	PJM hosts conference call for participants to discuss any concerns with the draft amended protective order.
10/9/23	5:10 PM	Counsel for PJM provides an updated draft of the amended protective order reflecting feedback from the participants. PJM requesting that the participants advise regarding any remaining opposition by Wednesday morning.
10/10/23	12:40 PM	Counsel for AMP responds to the updated draft expressing continued concerns regarding the process for gaining access to CEII as provided for in the draft protective order.
10/10/23	3:08 PM	Counsel for Vistra responds proposing edits that would permit in-house counsel to access “Highly Confidential Protected Materials” and (ii) add language that participants would make reasonable efforts to produce a redacted version of Highly Confidential Protected Materials” that could be shared with competitive duty personnel upon request.
10/10/23	5:58 PM	Counsel for the IMM responds to all participants indicating support for PJM’s proposed CEII protections in the amended draft.
10/11/23	4:33 PM	Counsel for PJM circulates an updated draft of the amended protective order and the PJM standard Non-Disclosure Agreement (“NDA”) for CEII access to all participants. PJM counsel requests that participants advise of any continued opposition by noon on 10/12/23.
10/11/23	6:14 PM	Counsel for AMP provides feedback regarding an outdated citation in the CEII NDA.
10/12/23	9:47 AM	Counsel for PJM responds advising counsel for AMP that PJM will update the citation in the NDA.
10/12/23	10:03 AM	Counsel for AMP responds that AMP will not oppose the motion.
10/12/23	10:45 AM	Counsel for Vistra responds that Vistra will not oppose the motion.
10/12/23	1:00 PM	Counsel for ODEC responds that ODEC does not oppose the motion.

ATTACHMENT B

Commission Trial Staff First Set of Data Requests to PJM

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.)
)
) **Docket No. EL21-91-003**

**Commission Trial Staff's
First Set of Data Requests to
PJM Interconnection, L.L.C.**

August 31, 2023

Pursuant to Rules 403 and 406 of the Commission's Rules of Practice and Procedure, 18 CFR §§ 385.403 and 385.406 (2022), Commission Trial Staff hereby submits its First Set of Data Requests to PJM Interconnection, L.L.C., along with general instructions and definitions. Please provide responses to the data requests to jeffrey.janicke@ferc.gov and keino.young@ferc.gov within 10 business days.

GENERAL INSTRUCTIONS

1. In the event that there is no information or there are no documents responsive to a data request, please so state.
2. Designate the data request in response to which any information or document is provided. For this purpose, please display responses in the customary form, i.e., by stating the data request first and followed by the corresponding response. Where the information or document responds to more than one request, a duplicate need not be provided. You need only cross-reference.
3. For each data request, please date the response and identify the preparer or person under whose direct supervision the response was prepared. All responses to these data requests must have a certification as required by 18 C.F.R. § 385.403(c).
4. Each response should be furnished on a separate page headed by the individual data request being answered.
5. Whenever a data request specifically requests an answer rather than the identification of documents, an answer is required, and the production of

documents in lieu thereof will not substitute for an answer.

6. These data requests apply to all responsive information and documents in the possession, custody, and control of PJM Interconnection, L.L.C. (PJM), or in the possession, custody, or control of attorneys, witnesses, or other agents of PJM, from all files, wherever located, including active and inactive files and including electronic files.
7. In responding to these data requests, please provide all information relating to the subject matter of the requests that is known to PJM, or to its attorneys, witnesses, or other agents. Responsive information and documents that are obtainable from PJM's affiliates through the exercise of reasonable diligence should be provided. If a data request cannot be answered in full, after exercising reasonable diligence to secure the requested information or documents, please state the answer to the extent possible, state why a full response cannot be provided, and state what knowledge PJM, its attorneys, witnesses, or other agents have concerning the unanswered portion of the data request, including the location and custodian of the information or document.
8. If any information sought in a data request will not be available by the response date for that request, provide an explanation and state the date on which such information will become available within five business days of receipt of the request.
9. With regard to any data request item consisting of separate subparts or portions, a complete response is required to each subpart or portion as if the subpart or portion was propounded as a separate data request item.
10. If requested to provide a study, schedule, or analysis, also provide the underlying workpapers and data (if not included in the workpapers) necessary to support such study, schedule, or analysis.
11. If you withhold any information or document requested in a data request, please state in detail the basis for the withholding and identify the documents withheld.
12. If you object to a data request or withhold any information or document requested in a data request, state in detail the basis for objecting or withholding the information or document, and identify the information and document withheld.
13. In connection with any claim of privilege or other discovery immunity, list all information and documents withheld under the claim of privilege, the respective data request and subpart affected and, for each, state: (a) a summary of the information and documents withheld; (b) the factual and legal predicates to the privileges or immunities being interposed; (c) the date of the information and

documents, number of pages, and number and title of attachments; (d) the name of each author or preparer of the information and documents; (e) the name of each recipient of the information and documents; and (f) furnish all portions of such information and documents that are not subject to the claimed privileges or immunities.

14. If you assert that information or documents responsive to any data request have been destroyed, state when and why the information or documents were destroyed. Additionally, identify the person who last had custody of the information or documents, identify the person directing the destruction of the information or documents, and identify all documents relevant to such destruction. If the destruction occurred pursuant to PJM's document destruction procedures, identify and produce a copy of the guideline, policy, or company manual describing such document procedures and any correspondence or communication relating to the destruction of the responsive information or documents.
15. If you have any question or uncertainty as to what is sought by the following data requests or if you encounter any ambiguity in interpreting the data requests, contact Commission Trial Staff (Trial Staff).
16. When producing documents or electronically stored information, unless otherwise stipulated or ordered, a participant must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request. If a request does not specify a form for producing electronically stored information, a participant must produce it in a form in which it is ordinarily maintained or in a reasonably usable form.
17. If any document that is responsive to these data requests has already been produced in response to a data request from another party to this proceeding, and that document has been previously provided to Trial Staff, PJM shall identify the bates label of that document in its response to Trial Staff's data requests rather than re-produce the document.
18. Section headings in the document are meant for convenience and not intended to restrict either the scope of the question or the scope of the response.
19. If you have any question concerning these instructions, the definitions or the data requests, contact Trial Staff Counsel Jeffrey Janicke at (202) 502-8227 or Keino Young at (202) 502-6574.

DEFINITIONS

The following definitions apply to the data requests:

- a. The terms “and” and “or” should be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of each data request any information or document which might otherwise be considered to be beyond its scope.
- b. “Affiliate” means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person. For purposes of this definition, a person shall be deemed to have “control” when such person possesses the power, directly or indirectly, to direct, or cause the direction of, the management and policies of another person, whether through the ownership of voting securities, by contract or otherwise, including acting as a general partner of a partnership.
- c. “Black Start Service” means the service provided pursuant to Schedule 6A of the PJM Open Access Transmission Tariff.
- d. “Black Start Unit” has the meaning set forth in Schedule 6A of the PJM Open Access Transmission Tariff.
- e. “Capital Recovery Factor” or “CRF” has the meaning set forth in Schedule 6A of the PJM Open Access Transmission Tariff.
- f. “Commission” means the Federal Energy Regulatory Commission.
- g. “Communication” means any transfer of information, whether written, printed, electronic (including e-mail), oral, pictorial, or otherwise transmitted by any means.
- h. “Document,” “documentation,” or “copy” means any writing or recording that contains information, however stored, produced or reproduced, including every copy of a document that contains handwritten or other notations or that otherwise does not exactly duplicate a separate document.
- i. Each data request to “provide all documents . . .” or similar phrases includes a request to “identify” all such documents
- j. “Identify,” in the context of documents, includes identifying (a) the nature of the document (e.g., letter, memorandum, corporate minutes), (b) the date, if any, appearing thereon, (c) the date, if known, on which the document was prepared, (d) the title of the document, (e) the general subject matter of the document, (f) the number of pages comprising the document, (g) the identity of each person who

wrote, dictated, or otherwise participated in the writing of the document, (h) the identity of each person who signed or initialed the document, (i) the identity of each person to whom the document was addressed, and (j) the identity of each person having custody of, or control over, the document. Each original and each non-identical copy (bearing marks), version and draft of each document should be identified and produced separately.

- k. “Market Monitor” means Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM Interconnection, L.L.C.
- l. “Person” should be interpreted to include every natural person, corporate entity, partnership, association (whether formally organized or ad hoc), joint venture, cooperative, municipality, commission, governmental body or agency.
- m. “Trial Staff” means the Staff of the Federal Energy Regulatory Commission’s Office of Administrative Litigation.
- n. “You,” “your,” or “PJM” means PJM Interconnection, L.L.C., and any of its employees, agents, contractors, consultants, attorneys, and any other person, business, or legal entity acting or purporting to act on PJM’s behalf.

DATA REQUESTS

- S-PJM-1.1. With regard to the Market Monitor’s representations in its Answer and Motion for Leave to Answer filed on May 9, 2023 in Docket No. EL21-91-000:
 - a. Do you dispute the assertion (at page 2) that “the Market Monitor performed the calculation of Capital Recovery Factor (CRF) values originally submitted by PJM”? If yes, please explain.
 - b. Do you dispute the Market Monitor’s characterization of the calculation of these rates? If yes, please explain.
- S-PJM-1.2. Please provide all available workpapers and/or formulas used to derive the CRF for facilities selected to provide Black Start Service prior to June 6, 2021 (pre-June 6, 2021 CRFs). Define all terms and where applicable provide as live Excel spreadsheets.
- S-PJM-1.3. Was the formula used to derive the pre-June 6, 2021 CRFs equivalent to the formula for the CRF for facilities selected to provide Black Start Service after June 6, 2021 (post-June 6, 2021 CRFs)? If not, please explain your understanding of the differences between the two formulas.

- S-PJM-1.4. Does the CRF increase with the age of the Black Start Unit under the pre-June 6, 2021 CRFs, as well as the post-June 6, 2021 CRFs? If there is a difference in how age affects CRF between the two, please explain that difference and why that difference exists.
- S-PJM-1.5. Please provide, in Excel format, a list of all Black Start Units that use the pre-June 2021 CRFs, as well as the payments made to each unit for Black Start Service since 2017.
- S-PJM-1.6. Please provide, in Excel format, a list of all Black Start Units that use the pre-June 2021 CRFs, as well as the incremental capital costs required to provide Black Start Service for each unit.
- S-PJM-1.7. Admit or Deny: The pre-June 2021 Black Start Service rates have a 36 percent corporate federal income tax rate as a built-in assumption, as outlined on page 8 of the October 2019 Review of Black Start Formula and Cost Components published by PJM Operation Analysis & Compliance Department.
- S-PJM-1.8. Please describe in detail any and all reviews of rates for Black Start services that PJM has conducted since 2017. In particular, indicate whether, in conducting any such review, PJM noted that the rate had a built-in assumption of a 36 percent corporate federal income tax rate.
- S-PJM-1.9. Since 2017, has any PJM employee or representative raised a concern over providing generators with compensation based on the 36 percent corporate federal income tax rate? If yes, please provide all related communications or records of communications.
- S-PJM-1.10. At any time since 2017, did PJM contact any entities providing Black Start Service regarding the out-of-date tax assumption built into the Black Start Service CRF? If yes, please provide all communications or records of communications.
- S-PJM-1.11. At any time since 2017, have any entities providing Black Start Service contacted PJM regarding the out-of-date tax assumption built into the Black Start Service CRF? If yes, please provide all related communications or records of communications.

S-PJM-1.12. Has PJM developed or received from generators any cost-of-service-based explanation as to why Black Start Units should continue to receive a tax allowance that is based on a past 36 percent corporate federal income tax rate, rather than the current 21 percent rate? If so, please describe in detail such explanation and provide any related documentation.

ATTACHMENT C

Commission Trial Staff Second Set of Data Requests to PJM

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.)
)
) **Docket No. EL21-91-003**

**Commission Trial Staff's
Second Set of Data Requests to
PJM Interconnection, L.L.C.**

September 13, 2023

Pursuant to Rules 403 and 406 of the Commission's Rules of Practice and Procedure, 18 CFR §§ 385.403 and 385.406 (2022), Commission Trial Staff (Trial Staff) hereby submits its Second Set of Data Requests to PJM Interconnection, L.L.C. (PJM). The general instructions and definitions included with Trial Staff's First Set of Data Requests to PJM are incorporated by reference and apply equally to these data requests. Please provide responses to the data requests to jeffrey.janicke@ferc.gov and keino.young@ferc.gov within 10 business days.

DATA REQUESTS

- S-PJM-2.1. To the extent you contend that, under the existing corporate federal income tax rate of 21 percent, the Capital Cost Recovery Rate for generating units that were selected to provide Black Start Service prior to June 6, 2021 remains just and reasonable due to other changes that offset the effect of the reduction in the tax rate to 21 percent, please describe in detail each such change and quantify the financial impact thereof.

- S-PJM-2.2. Please provide a description of each current Black Start Unit selected to provide Black Start Service prior to June 6, 2021, including type of fuel used, MW of capacity, age, location, effective state tax rate, and ownership.

- S-PJM-2.3. Referring to the Black Start Units described in your response to S-PJM-2.2, please identify each that receives Black Start Service compensation under section 5 of Schedule 6A of the PJM Open Access Transmission Tariff.
- S-PJM-2.4. Referring to the Black Start Units described in your response to S-PJM-2.2, please identify each that receives Black Start Service compensation under section 6 of Schedule 6A of the PJM Open Access Transmission Tariff.
- S-PJM-2.5. Referring to the Black Start Units described in your response to S-PJM-2.2, please identify each that follows the NERC-CIP Specific Recovery formula for calculating Fixed Black Start Service Costs as specified in Section 18 of Schedule 6A of the PJM Open Access Transmission Tariff.
- S-PJM-2.6. Referring to the Black Start Units described in your response to S-PJM-2.2, please identify each that follows the Capital Cost Recovery Rate formula utilizing a FERC-approved rate for calculating Fixed Black Start Service Costs as specified in Section 18 of Schedule 6A of the PJM Open Access Transmission Tariff.
- S-PJM-2.7. Please refer to the following statement on page 8 of PJM’s October 2019 Review of Black Start Cost Components: “The CRF table has several different assumptions such as: the Capital Recovery Factor based on a levelized proforma for a 100MW Combustion Turbine for \$1M, 2.5 percent inflation, 36 percent federal tax rate, 9 percent state tax rate, income tax rate 41 percent, 50 percent equity and 50 percent debt with a 7 percent interest rate, and a 12percent [sic] internal rate of return on equity.”
- a. Please identify the individual or individuals who authored this statement.
 - b. Please identify each individual who was responsible for overseeing or approving the content of the document in which this statement is contained.
 - c. If your response to S-PJM-1.7 is anything other than an unqualified admission, please explain in detail how such response is consistent with the statement quoted in this request S-PJM-2.7.

S-PJM-2.8.

Please refer to the October 8, 2020 “Black Start PS/IC: Summary of IMM and PJM Proposals” presentation by Becky Davis, available at [20201008-item-04-black-start-unit-testing-crf-involuntary-termination-and-substitution-rules-presentation.ashx](https://www.pjm.com/20201008-item-04-black-start-unit-testing-crf-involuntary-termination-and-substitution-rules-presentation.ashx) (pjm.com). In particular, please see the references on slide 4 to “Update Capital Recovery Factors,” “Reflect federal income tax and interest rate changes,” and “Updates to Depreciation as applicable under the tax code.”

- a. Please identify the individual or individuals who determined that there was a need to “update” the capital recovery factors to reflect a “change” to the federal income tax.
- b. Did the then-existing CRF include a built-in assumption of a particular federal income tax rate? If not, then please explain why the referenced presentation identifies a need to “update” the capital recovery factors to reflect a “change” to the federal income tax.
- c. Please identify the individual or individuals who determined that there was a need to “update” the capital recovery factors to reflect a “change” to the interest rate.
- d. Did the then-existing CRF include a built-in assumption of a particular interest rate? If not, then please explain why the referenced presentation identifies a need to “update” the capital recovery factors to reflect a “change” to the interest rate.
- e. Please identify the individual or individuals who determined that there was a need to “update” the capital recovery factors due to “updates” to depreciation as applicable under the federal tax code.
- f. Did the then-existing CRF include a built-in assumption as to depreciation as applicable under the federal tax code. If not, then please explain why the presentation identifies a need for an “update” related to such.

ATTACHMENT D

PJM Responses to Commission Trial Staff's First Set of Data Requests

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.

Docket No. EL21-91-000

**RRESPONSES OF PJM INTERCONNECTION, L.L.C.
TO COMMISSION TRIAL STAFF'S FIRST SET OF DATA REQUESTS**

Pursuant to Rules 406 and 410 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 CFR §§ 385.406 and 385.410 (2023), PJM Interconnection, L.L.C. (“PJM”) hereby provides the following responses to Commission Trial Staff’s First Set of Data Requests to PJM served on PJM on August 31, 2021. PJM did not include the information responsive to data request S-PJM-1.5 because it contains highly confidential market sensitive PJM Member information and Critical Energy Infrastructure Information (“CEII”). PJM will apply for a more stringent protective order to address such disclosures.

Respectfully submitted,

/s/ Steven R Pincus

Craig Glazer
VP, Federal Government Policy
PJM Interconnection, L.L.C.
Suite 600
1200 G Street, N.W.
Washington, DC 20005
(202) 423-4743 (phone)

Steven R. Pincus
Managing Counsel, Sr. Director
PJM Interconnection, L.L.C
2750 Monroe Boulevard
Audubon, PA 19403
(610) 666-4370 (phone)

Dated: September 20, 2023

S-PJM-1.1. With regard to the Market Monitor’s representations in its Answer and Motion for Leave to Answer filed on May 9, 2023 in Docket No. EL21-91-000:

- a. Do you dispute the assertion (at page 2) that “the Market Monitor performed the calculation of Capital Recovery Factor (CRF) values originally submitted by PJM”? If yes, please explain.

PJM Response:

Subject to the objections served by PJM on September 15, 2023, and without waiver of the same, PJM responds as follows:

PJM does not dispute that in 2006 the Market Monitor performed calculations of CFR values for PJM’s internal purposes (the Market Monitor was internal to PJM at the time); however, it was not shared with stakeholders or submitted to the Commission to support the fixed black box CRF number incorporated into the Tariff.

- b. Do you dispute the IMM’s characterization of the calculation of these rates? If yes, please explain.

PJM Response:

Subject to the objections served by PJM on September 15, 2023, and without waiver of the same, PJM responds as follows:

In the context in which it is stated, PJM disputes the assertion quoted above. That quote was taken from the Market Monitor’s answer filed on May 9, 2023, in response to the April 24, 2023 rehearing request and its characterization of the CRF rate. The Market Monitor stated that it “performed the calculation of CRF values originally submitted by PJM”, to advance its argument that the CRF rate submitted by PJM in 2006 was not a black box rate. While the CRF rates were calculated internally using tax and other relevant economic information, the original CRF values were “black box” numbers because the

tax rate assumptions, relevant economic inputs, and method used in the calculations were not identified in the Schedule 6A Tariff language or the associated filing letter or any other supporting documents submitted to the Commission. In addition, generators offering into Black Start RFPs were unaware of all details associated with the CRF calculation. To the best of PJM's knowledge, the IMM calculated the original CRF rates in 2006 when the IMM was internal to PJM and they used the Excel spreadsheet referenced below for internal purposes only.

PJM Employees Providing Responses:

Glen Boyle - Sr. Manager, Performance Compliance

The response to the data requests above have been prepared under my supervision and control, and are true, complete, and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

/s/ Glen Boyle

Glen Boyle

Sr. Manger, Performance Compliance

Dated: September 20, 2023

S-PJM-1.2 Please provide all available workpapers and/or formulas used to derive the CRF for Black Start facilities selected to provide service prior to June 6, 2021 (pre-June 6, 2021 CRFs). Define all terms and where applicable provide as live Excel spreadsheets.

PJM Response:

Subject to the objections served by PJM on September 15, 2023, and without waiver of the same, PJM responds as follows:

As stated above, there were no workpapers or formulas submitted to FERC in 2006 in support of the CRF values for pre-June 6, 2021 Black Start Units. The stated CRF values applicable to pre-June 6, 2021 Black Start Units set forth in the Tariff are “black box” numbers, as neither the Tariff nor the PJM Manuals specify their bases or how they were calculated. However, the data inputs and assumption used by PJM for internal purposes to calculate the static black box CRF values are set forth in the attached Excel spreadsheet. PJM reiterates that the pre-June 6, 2021 CRF values set forth in the table in Tariff, Schedule 6A, are static black box rates not designed to be adjusted to reflect future changes to any assumptions, as compared to the mathematical equation for deriving the formulaic CRF used in the formula for post-June 6, 2021 Black Start Units.

PJM Employees Providing Responses:

Glen Boyle - Sr. Manager, Performance Compliance

The response to the data request above has been prepared under my supervision and control, and is true, complete, and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

/s/ Glen Boyle

Glen Boyle

Sr. Manger, Performance Compliance

Dated: September 20, 2023

S-PJM-1.3 Was the formula used to derive the pre-June 6, 2021 CRFs equivalent to the formula for the CRF for facilities selected to provide service after June 6, 2021 (post-June 6, 2021 CRFs)? If not, please explain your understanding of the differences between the two formulas.

PJM Response:

Subject to the objections served by PJM on September 15, 2023, and without waiver of the same, PJM responds as follows:

The data inputs and assumption used by PJM for internal purposes to calculate the static black box pre-June 6, 2021 CRF values that were added into the Schedule 6A CRF table are the same as the data inputs and assumptions used in the formula for the CRF for Black Start Units selected to provide Black Start Service after June 6, 2021, adjusted to reflect current values.

PJM Employees Providing Responses:

Glen Boyle - Sr. Manager, Performance Compliance

The response to the data request above has been prepared under my supervisions and control, and is true, complete, and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

/s/ Glen Boyle

Glen Boyle

Sr. Manger, Performance Compliance

Dated: September 20, 2023

S-PJM-1.4 Does the CRF increase with the age of the Back Start Unit under the pre-June 6, 2021 CRFs, as well as the post-June 6, 2021 CRFs? If there is a difference in how age affects CRF between the two, please explain that difference and why that difference exists.

PJM Response:

Subject to the objections served by PJM on September 15, 2023, and without waiver of the same, PJM responds as follows:

The CRF does increase with the age of the Black Start unit. The age affects the CRF values set forth in the Tariff CRF table the same way for Black Start Units under the pre-June 6, 2021 formula as it would for the Black Start units under the post-June 6, 2021 formula.

PJM Employees Providing Responses:

Glen Boyle - Sr. Manager, Performance Compliance

The response to the data request above has been prepared under my supervisions and control, and is true, complete, and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

/s/ Glen Boyle

Glen Boyle

Sr. Manger, Performance Compliance

Dated: September 20, 2023

S-PJM-1.5 Please provide, in Excel format, a list of all Black Start Units that use the pre-June 2021 CRFs, as well as the payments made to each unit for Black Start Service since 2017.

PJM Response:

Subject to the objections served by PJM on September 15, 2023, and without waiver of the same, PJM responds as follows:

This data requests would require PJM to submit an Excel spreadsheet that lists the identity of all Black Start Units that recovered incremental Black Start Capital Costs under PJM's Tariff, Schedule 6A Section 18, Fixed Black Start Service Cost Capital Cost Recovery Rate using the Schedule 6A pre-June 2021 CRFs, and the payments made to them. Because this information is highly confidential market sensitive PJM Member information and CEII, it is not include with this data request response. PJM will apply for a more stringent protective order to address such disclosures.

PJM Employees Providing Responses:

Glen Boyle - Sr. Manager, Performance Compliance

The response to the data request above has been prepared under my supervisions and control, and is true, complete, and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

/s/ Glen Boyle

Glen Boyle

Sr. Manger, Performance Compliance

Dated: September 20, 2023

S-PJM-1.6 Please provide, in Excel format, a list of all Black Start Units that use the pre-June 2021 CRFs, as well as the incremental capital costs required to provide Black Start Service for each unit.

PJM Response:

Subject to the objections served by PJM on September 15, 2023, and without waiver of the same, PJM responds as follows:

See PJM Response to S-PJM-1.5 above.

PJM Employees Providing Responses:

Glen Boyle - Sr. Manager, Performance Compliance

The response to the data request above has been prepared under my supervisions and control, and is true, complete, and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

/s/ Glen Boyle

Glen Boyle

Sr. Manger, Performance Compliance

Dated: September 20, 2023

S-PJM-1.7 Admit or Deny: The pre-June 2021 Black Start Service rates have a 36 percent corporate federal income tax rate as a built-in assumption, as outlined on page 8 of the October 2019 Review of Black Start Formula and Cost Components published by PJM Operation Analysis & Compliance Department.

PJM Response:

Subject to the objections served by PJM on September 15, 2023, and without waiver of the same, PJM responds as follows:

PJM Tariff, Schedule 6A, section 6, in effect in 2019 provides the following:

Owners of Black Start Units selected to provide Black Start Service in accordance with section 4 of this Schedule 6A and electing to recover new or additional Black Start Capital Costs shall commit to provide Black Start Service from such Black Start Units for a term based upon the age of the Black Start Unit or the longest expected life of the Incremental Black Start Capital Cost, as set forth in the applicable CRF Tables in section 18 of this Schedule 6A.

The version of the Tariff, Schedule 6A, section 18 in effect in 2019 provided for a formula for calculating the annual Black Start Service requirement, which includes a stated “Levelized CRF based on the age of the Black Start Unit” and is presented in a CRF Table:

Age of Black Start Unit	Term of Black Start Commitment	Levelized CRF
1 to 5	20	0.125
6 to 10	15	0.146
11 to 15	10	0.198
16+	5	0.363

In 2019, there was no formula or description of how the CRF was derived in the Tariff. It was presented as a “black box” values. Schedule 6A, section 18, sets forth the calculation of a Black Start generator’s revenue requirement and states:

Every five years, PJM shall review the formula and its costs components set forth in this section 18, and report on the results of that review to stakeholders.

Consistent with Tariff, Schedule 6A, section 18, PJM conducted a review of the Black Start formula and components, as well as recent Black Start Request for Proposals (RFPs) in October 2019. At that time, PJM concluded that no additional changes were needed based on the RFP responses. PJM's stated objective of its review is to determine whether the rate is adequate to procure the necessary Black Start services. The 2019 report did review the CRF that included certain assumptions for inflation, the 36 percent federal corporate income tax rate, and state income tax rates, the debt/equity ratio, and the debt interest rate. The review did not result in changing the CRF rate to reflect the change in federal tax law nor was PJM required to do so. PJM published its report and reviewed the results with the Members. No stakeholder, including the IMM, raised any issue at that time. The CRF values in the Schedule 6A table was not updated as part of the five-year review because the CRF values are fixed in the Tariff and are not required to be refreshed based upon the review. Any changes to the Black Start CRF would require a filing pursuant to the Federal Power Act and acceptance by FERC to become effective.

PJM Employees Providing Responses:

Glen Boyle - Sr. Manager, Performance Compliance

The response to the data request above has been prepared under my supervisions and control, and is true, complete, and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

/s/ Glen Boyle

Glen Boyle

Sr. Manger, Performance Compliance

Dated: September 20, 2023

S-PJM-1.8 Please describe in detail any and all reviews of rates for Black Start services that PJM has conducted since 2017. In particular, indicate whether, in conducting any such review, PJM noted that the rate had a built-in assumption of a 36 percent corporate federal income tax rate.

PJM Response:

Subject to the objections served by PJM on September 15, 2023, and without waiver of the same, PJM responds as follows:

See PJM Response to S-PJM-1.7 above.

PJM Employees Providing Responses:

Glen Boyle - Sr. Manager, Performance Compliance

The response to the data request above has been prepared under my supervisions and control, and is true, complete, and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

/s/ Glen Boyle

Glen Boyle

Sr. Manger, Performance Compliance

Dated: September 20, 2023

S-PJM-1.9 Since 2017, has any PJM employee or representative raised a concern over providing generators with compensation based on the 36 percent corporate federal income tax rate? If yes, please provide all related communications or records of communications.

PJM Response:

Subject to the objections served by PJM on September 15, 2023, and without waiver of the same, PJM responds as follows:

No PJM employee or representative raised a concern over providing generators with compensation pursuant to the term of the PJM Tariff, Schedule 6A, based on the 36 percent corporate federal income tax rate that went into effect in 2018, independent of discussions about the Market Monitor's questions.

PJM Employees Providing Responses:

Glen Boyle - Sr. Manager, Performance Compliance

The response to the data request above has been prepared under my supervisions and control, and is true, complete, and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

/s/ Glen Boyle

Glen Boyle

Sr. Manger, Performance Compliance

Dated: September 20, 2023

S-PJM-1/10 At any time since 2017, did PJM contact any entities providing Black Start Service regarding the out-of-date tax assumption built into the Black Start Service CRF? If yes, please provide all communications or records of communications.

PJM Response:

Subject to the objections served by PJM on September 15, 2023, and without waiver of the same, PJM responds as follows:

Outside of the stakeholder process to revise the Tariff to change the CRF from the fixed rate to a formula rate, at no time did PJM contact any entities providing Black Start Service regarding the tax assumption for the Black Start Service fixed CRF.

PJM Employees Providing Responses:

Glen Boyle - Sr. Manager, Performance Compliance

The response to the data requests above has been prepared under my supervisions and control, and is true, complete, and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

/s/ Glen Boyle

Glen Boyle

Sr. Manger, Performance Compliance

Dated: September 20, 2023

S-PJM-1.11 At any time since 2017, have any entities providing Black Start Service contacted PJM regarding the out-of-date tax assumption built into the Black Start Service CRF? If yes, please provide all related communications or records of communications.

PJM Response:

Subject to the objections served by PJM on September 15, 2023, and without waiver of the same, PJM responds as follows:

Outside of the stakeholder process to revise the Tariff to change the CRF from the fixed rate to a formula rate, at no time did any entities providing Black Start Service contact PJM regarding the tax assumption for the Black Start Service fixed CRF.

PJM Employees Providing Responses:

Glen Boyle - Sr. Manager, Performance Compliance

The response to the data requests above has been prepared under my supervisions and control, and is true, complete, and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

/s/ Glen Boyle

Glen Boyle

Sr. Manger, Performance Compliance

Dated: September 20, 2023

S-PJM-1.12 Has PJM developed or received from generators any cost-of-service-based explanation as to why Black Start Units should continue to receive a tax allowance that is based on a past 36 percent corporate federal income tax rate, rather than the current 21 percent rate? If so, please describe in detail such explanation and provide any related documentation.

PJM Response:

Subject to the objections served by PJM on September 15, 2023, and without waiver of the same, PJM responds as follows:

No.

PJM Employees Providing Responses:

Glen Boyle - Sr. Manager, Performance Compliance

The response to the data requests above has been prepared under my supervisions and control, and is true, complete, and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

/s/ Glen Boyle

Glen Boyle

Sr. Manger, Performance Compliance

Dated: September 20, 2023

ATTACHMENT E

PJM Objections to Commission Trial Staff's Second Set of Data Requests

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.) Docket No. EL21-91-003

**OBJECTIONS OF PJM INTERCONNECTION, L.L.C. TO
COMMISSION TRIAL STAFF’S SECOND SET OF DATA REQUESTS**

September 20, 2023

PJM Interconnection, L.L.C. (“PJM”), pursuant to the Commission’s (“Commission”) discovery rules, 18 C.F.R. part 385, Subpart D, hereby objects to certain of the requests in the second set of data requests of Commission Trial Staff dated September 13, 2023. Subject to all objections and claims of confidentiality and privilege, PJM will make its best efforts to respond to the requests.

I. GENERAL OBJECTIONS

In addition to the specific objections set forth below, PJM asserts the following general objections:

1. PJM objects to any data request to the extent that it seeks information or documents protected from disclosure by the attorney-client privilege, work product doctrine, settlement privilege, or any other privileges or protections.
2. PJM objects to any data request to the extent that it requires the production or disclosure of documents or information that is not likely to produce information relevant to the issues in this proceeding.
3. PJM objects to any data request that calls for the production or disclosure of information or documents that are not in the possession, custody, or control of PJM.

4. PJM objects to any data request to the extent that it would impose an undue burden on PJM, including but not limited to by requiring PJM to perform studies, analyses, or calculations or otherwise to create documents that do not currently exist.
5. PJM objects to any data request to the extent that it calls for, or can be interpreted as calling for, legal conclusions, or to the extent that it assumes disputed issues or is phrased in such a way as to be lacking foundation, argumentative, prejudicial, based on a false premise, or improper.
6. PJM objects to any data request to the extent that it is overly broad, unduly burdensome, or oppressive.
7. PJM objects to any data request to the extent that it is vague or ambiguous, contains words or phrases that are confusing, or does not identify with specificity the information or material sought.

In addition, PJM objects to instructions or definitions to the extent they purport to impose obligations in excess of those required by the Commission's rules or customary practice before the Commission, including, without limitation, the following General Instructions:

6. These data requests apply to all responsive information and documents in the possession, custody, and control of PJM Interconnection, L.L.C. (PJM), or in the possession, custody, or control of attorneys, witnesses, or other agents of PJM, from all files, wherever located, including active and inactive files and including electronic files.

Objection: PJM objects to this General Instruction as unduly burdensome and oppressive insofar as it seeks to require PJM to conduct discovery and compel production of data and documents from third parties on behalf of Commission Trial Staff. PJM disclaims any responsibility for engaging in discovery or compelling production from third parties on behalf of Commission Trial Staff. PJM further objects to this General Instruction as overly broad, unduly burdensome, and oppressive to the extent that it seeks information not within PJM's knowledge, custody, or control. PJM also objects to this General Instruction to the extent it purports to require a search

of the files of PJM's attorneys and witnesses as seeking information and documents protected from disclosure by the attorney-client privilege, work product doctrine, or any other privileges or protections. PJM further objects to this General Instruction as vague and ambiguous to the extent that it seeks information from PJM's "active and inactive files . . . including electronic files" as those terms are not defined. Finally, PJM objects to this General Instruction as unduly burdensome, oppressive, and not reasonably calculated to lead to admissible evidence insofar as it purports to require a search of PJM's "inactive files . . . including electronic files."

7. In responding to these data requests, please provide all information relating to the subject matter of the requests that is known to PJM, or to its attorneys, witnesses, or other agents. Responsive information and documents that are obtainable from PJM's affiliates through the exercise of reasonable diligence should be provided. If a data request cannot be answered in full, after exercising reasonable diligence to secure the requested information or documents, please state the answer to the extent possible, state why a full response cannot be provided, and state what knowledge PJM, its attorneys, witnesses, or other agents have concerning the unanswered portion of the data request, including the location and custodian of the information or document.

Objection: PJM objects to this General Instruction as unduly burdensome and oppressive insofar as it seeks to require PJM to conduct discovery and compel production of data and documents from third parties on behalf of Commission Trial Staff. PJM disclaims any responsibility for engaging in discovery or compelling production from third parties on behalf of Commission Trial Staff. PJM further objects to this General Instruction as overly broad, unduly burdensome, and oppressive to the extent that it seeks information not within PJM's knowledge, custody, or control. PJM also objects to this General Instruction to the extent it purports to require a search of the files of PJM's attorneys and witnesses as seeking information and documents protected from disclosure by the attorney-client privilege, work product doctrine, or any other privileges or protections.

10. If requested to provide a study, schedule, or analysis, also provide the underlying workpapers and data (if not included in the workpapers) necessary to support such study, schedule, or analysis.

Objection: PJM objects to this General Instruction as vague and ambiguous, as the terms "study, schedule, or analysis" are not defined, nor is the term "workpapers."

11. If you withhold any information or document requested in a data request, please state in detail the basis for the withholding and identify the documents withheld.

Objection: PJM objects to this General Instruction as vague to the extent it purports to require PJM to state "in detail" the basis for withholding information or documents. PJM further objects to this General Instruction as not

reasonably calculated to lead to admissible evidence and unduly burdensome to the extent it purports to require PJM to provide information beyond that required to substantiate a privilege claim. PJM shall identify, in accordance with Commission guidelines and customary practice before the Commission, any documents withheld on the basis of privilege, as and when otherwise responsive documents are located and determined to be subject to such a privilege.

12. If you object to a data request or withhold any information or document requested in a data request, state in detail the basis for objecting or withholding the information or document, and identify the information and document withheld.

Objection: PJM objects to this General Instruction as vague to the extent it purports to require PJM to state “in detail” the basis for objecting or withholding information or documents. PJM further objects to this General Instruction as not reasonably calculated to lead to admissible evidence and unduly burdensome to the extent it purports to require PJM to provide information beyond that required to substantiate a privilege claim. PJM shall identify, in accordance with Commission guidelines and customary practice before the Commission, any documents withheld on the basis of privilege, as and when otherwise responsive documents are located and determined to be subject to such a privilege.

13. In connection with any claim of privilege or other discovery immunity, list all information and documents withheld under the claim of privilege, the respective data request and subpart affected and, for each, state: (a) a summary of the information and documents withheld; (b) the factual and legal predicates to the privileges or immunities being interposed; (c) the date of the information and documents, number of pages, and number and title of attachments; (d) the name of each author or preparer of the information and documents; (e) the name of each recipient of the information and documents; and (f) furnish all portions of such information and documents that are not subject to the claimed privileges or immunities.

Objection: PJM objects to this General Instruction as vague and ambiguous to the extent it purports to require PJM to “list all information” withheld under a claim of privilege. PJM further objects to this General Instruction as not reasonably calculated to lead to admissible evidence and unduly burdensome to the extent it purports to require PJM to provide information beyond that required to substantiate a privilege claim. PJM shall identify, in accordance with Commission guidelines and customary practice before the Commission, any documents withheld on the basis of privilege, as and when otherwise responsive documents are located and determined to be subject to such a privilege.

14. If you assert that information or documents responsive to any data request have been destroyed, state when and why the information or documents were destroyed. Additionally, identify the person who last had custody of the information or

documents, identify the person directing the destruction of the information or documents, and identify all documents relevant to such destruction. If the destruction occurred pursuant to PJM's document destruction procedures, identify and produce a copy of the guideline, policy, or company manual describing such document procedures and any correspondence or communication relating to the destruction of the responsive information or documents.

Objection: PJM objects to this General Instruction as unduly burdensome to the extent it seeks to require PJM to "state when and why" documents were destroyed and various other information about theoretical destroyed documents. PJM also objects to this General Instruction as vague as to instances where "destruction occurred pursuant to PJM's document destruction procedures," as "destruction" and "document destruction procedures" are not defined.

19. If you have any question concerning these instructions, the definitions or the data requests, contact Trial Staff Counsel Jeffrey Janicke at (202) 502-8227 or Keino Young at (202) 502-6574.

Objection: PJM objects to this General Instruction as exceeding the requirements of the Commission's Rules of Practice and Procedure. PJM objects to responding to data requests that fail to identify the information or documents sought with specificity.

II. OBJECTIONS TO DEFINITIONS

1. PJM objects to Definition h, "Document" as overly broad and unduly burdensome to the extent that it requires production of data, information, or documents that are neither relevant to this proceeding nor likely to lead to the discovery of admissible evidence. PJM objects to Definition h as unduly burdensome to the extent that it calls for information that PJM does not have in its custody and/or control. PJM also objects to Definition h as overly broad and unduly burdensome to the extent it requires PJM to provide draft versions of each document produced. PJM further objects to Definition h to the extent the definition encompasses items that PJM does not record and of which PJM does not otherwise retain records and that therefore render the definition unduly burdensome, vague, and overly broad. To the extent that the definition purports to require PJM to produce information conveyed by or to PJM's attorneys, such a definition is objectionable because it would require PJM to provide information that is protected by the attorney-client privilege or the work-product doctrine;
2. PJM objects to Definition g as overly broad. "Communications" encompasses oral communications that PJM does not record and of which PJM does not otherwise retain records. To the extent that Definition g purports to require PJM to produce information conveyed by or to PJM's attorneys, PJM objects because such a definition would require PJM to provide information that is protected by the attorney-client privilege or the work-product doctrine;

3. PJM objects to Definition i as overly broad and unduly burdensome, as it instructs PJM to not only provide all documents but also “identify” all documents provided, which includes providing a wide range of information about each document of which PJM does not otherwise retain records.
4. PJM objects to Definition j as overly broad and unduly burdensome. “Identify” is unduly burdensome to the extent that it encompasses information that PJM does not record and of which PJM does not otherwise retain records. To the extent that the definition purports to require PJM to produce information conveyed by or to PJM’s attorneys, such a definition is objectionable because it would require PJM to provide information that is protected by the attorney-client privilege or the work-product doctrine;

PJM also generally objects to any request that seeks the production of documents or information that is confidential or non-public, including but not limited to documents or information provided to PJM by Market Participants that PJM is required by its Tariff, Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“PJM Operating Agreement”), or other governing agreement to keep confidential. Notwithstanding such objection, PJM will provide such confidential documents or information pursuant to, and subject to the conditions and limitations of, the protective order in this proceeding, and subject to compliance with any applicable requirements or conditions on release of such documents or information under the PJM Operating Agreement. However, PJM generally objects to any request that seeks the production of documents or information that is highly confidential Critical Energy Infrastructure Information (“CEII”) or market-sensitive as the currently effective protective order does not contain adequate protections for such information. PJM intends to move to amend the protective order to include the appropriate protections for these categories of highly sensitive information.

III. OBJECTIONS TO DISCOVERY

S-PJM-2.1. To the extent you contend that, under the existing corporate federal income tax rate of 21 percent, the Capital Cost Recovery Rate for generating units that were selected to provide Black Start Service prior to June 6, 2021 remains just and reasonable due to other changes that offset the effect of the reduction in the tax rate to 21 percent, please describe in detail each such change and quantify the financial impact thereof.

Objection: PJM objects to this request because it relies on a false premise. PJM further objects to this request as vague and ambiguous to the extent it asks PJM to “describe in detail each such change and quantify the financial impact thereof.”

S-PJM-2.2. Please provide a description of each current Black Start Unit selected to provide Black Start Service prior to June 6, 2021, including type of fuel used, MW of capacity, age, location, effective state tax rate, and ownership.

Objection: PJM objects to this request as calling for highly confidential CEII and market sensitive information that is not adequately protected under the currently effective protective order in this proceeding. PJM also objects to this request as vague and ambiguous to the extent it asks for “a description” and the “effective state tax rate,” as those terms are not defined. PJM further objects to this request as not reasonably calculated to lead to the discovery of admissible evidence, as the specific units providing Black Start Service have no bearing on the continued justness and reasonableness of the CRF in light of the federal corporate income tax rate cut.

S-PJM-2.3. Referring to the Black Start Units described in your response to S-PJM-2.2, please identify each that receives Black Start Service compensation under section 5 of Schedule 6A of the PJM Open Access Transmission Tariff.

Objection: PJM objects to this request as calling for highly confidential CEII and market sensitive information that is not adequately protected under the currently effective protective order in this proceeding. PJM also objects to this request as not reasonably calculated to lead to the discovery of admissible evidence, as the units that receive compensation under specific schedules has no bearing on the continued justness and reasonableness of the CRF in light of the federal corporate income tax rate cut.

S-PJM-2.4. Referring to the Black Start Units described in your response to S-PJM-2.2, please identify each that receives Black Start Service compensation under section 6 of Schedule 6A of the PJM Open Access Transmission Tariff.

Objection: PJM objects to this request as calling for highly confidential CEII and market sensitive information that is not adequately protected under the currently effective protective order in this proceeding. PJM also objects to this request as not reasonably calculated to lead to the discovery of admissible evidence, as the units that receive compensation under specific schedules has no bearing on the continued justness and reasonableness of the CRF in light of the federal corporate income tax rate cut.

S-PJM-2.5. Referring to the Black Start Units described in your response to S-PJM-2.2, please identify each that follows the NERC-CIP Specific Recovery formula for calculating Fixed Black Start Service Costs as specified in Section 18 of Schedule 6A of the PJM Open Access Transmission Tariff.

Objection: PJM objects to this request as calling for highly confidential CEII and market sensitive information that is not adequately protected under the currently effective protective order in this proceeding. PJM also objects to this request as not reasonably calculated to lead to the discovery of admissible evidence, as the units that receive compensation under specific schedules has no bearing on the continued justness and reasonableness of the CRF in light of the federal corporate income tax rate cut.

S-PJM-2.6. Referring to the Black Start Units described in your response to S-PJM-2.2, please identify each that follows the Capital Cost Recovery Rate formula utilizing a FERC-approved rate for calculating Fixed Black Start Service Costs as specified in Section 18 of Schedule 6A of the PJM Open Access Transmission Tariff.

Objection: PJM objects to this request as calling for highly confidential CEII and market sensitive information that is not adequately protected under the currently effective protective order in this proceeding. PJM also objects to this request as not reasonably calculated to lead to the discovery of admissible evidence, as the formula individual units use has no bearing on the continued justness and reasonableness of the CRF in light of the federal corporate income tax rate cut.

S-PJM-2.7. Please refer to the following statement on page 8 of PJM’s October 2019 Review of Black Start Cost Components: “The CRF table has several different assumptions such as: the Capital Recovery Factor based on a levelized proforma for a 100MW Combustion Turbine for \$1M, 2.5 percent inflation, 36 percent federal tax rate, 9 percent state tax rate, income tax rate 41 percent, 50 percent equity and 50 percent debt with a 7 percent interest rate, and a 12percent [sic] internal rate of return on equity.”

- a. Please identify the individual or individuals who authored this statement.

Objection: PJM objects to this request as vague and ambiguous to the extent it requests that PJM identify the person who “authored” the “statement,” as the term “authored” is not defined and the quoted language contains several clauses.

- b. Please identify each individual who was responsible for overseeing or approving the content of the document in which this statement is contained.

Objection: PJM objects to this request as vague and ambiguous to the extent it directs PJM to identify each individual “who was responsible for overseeing or approving the content of the document,” as the terms “overseeing” and “approving” are not defined.

- c. If your response to S-PJM-1.7 is anything other than an unqualified admission, please explain in detail how such response is consistent with the statement quoted in this request S-PJM-2.7.

Objection: PJM objects to this request as vague and ambiguous as to what constitutes an “unqualified admission.”

- S-PJM-2.8.** Please refer to the October 8, 2020 “Black Start PS/IC: Summary of IMM and PJM Proposals” presentation by Becky Davis, available at [20201008-item-04-black-start-unit-testing-crf-involuntary-termination-and-substitution-rules-presentation.ashx \(pjm.com\)](https://www.pjm.com/20201008-item-04-black-start-unit-testing-crf-involuntary-termination-and-substitution-rules-presentation.ashx). In particular, please see the references on slide 4 to “Update Capital Recovery Factors,” “Reflect federal income tax and interest rate changes,” and “Updates to Depreciation as applicable under the tax code.”
- a. Please identify the individual or individuals who determined that there was a need to “update” the capital recovery factors to reflect a “change” to the federal income tax.

Objection: PJM objects to this request as it assumes the disputed fact that an individual or individuals determined there was a need to update the capital recovery factors to reflect a change in the federal income tax rate.

- b. Did the then-existing CRF include a built-in assumption of a particular federal income tax rate? If not, then please explain why the referenced presentation identifies a need to “update” the capital recovery factors to reflect a “change” to the federal income tax.

Objection: PJM objects to this request as vague and ambiguous as to what constitutes the “then-existing CRF” and “built-in assumption” as those terms are not defined.

- c. Please identify the individual or individuals who determined that there was a need to “update” the capital recovery factors to reflect a “change” to the interest rate.

Objection: PJM objects to this request as it assumes the disputed fact that an individual or individuals determined there was a need to update the capital recovery factors to reflect a change in the interest rate.

- d. Did the then-existing CRF include a built-in assumption of a particular interest rate? If not, then please explain why the referenced presentation identifies a need to “update” the capital recovery factors to reflect a “change” to the interest rate.

Objection: PJM objects to this request as vague and ambiguous as to what constitutes the “then-existing CRF” and “built-in assumption” as those terms are not defined.

- e. Please identify the individual or individuals who determined that there was a need to “update” the capital recovery factors due to “updates” to depreciation as applicable under the federal tax code.

Objection: PJM objects to this request as it assumes the disputed fact that an individual or individuals determined there was a need to update the capital recovery factors due to “updates” in depreciation under the federal tax code.

- f. Did the then-existing CRF include a built-in assumption as to depreciation as applicable under the federal tax code. If not, then please explain why the presentation identifies a need for an “update” related to such.

Objection: PJM objects to this request as vague and ambiguous as to what constitutes the “then-existing CRF” and “built-in assumption” as those terms are not defined.

ATTACHMENT F

Email from S. Pincus to J. Janicke providing responses to S-PJM 1.5 and S-PJM 1.6

From: [Pincus, Steven](#)
To: [Jeffrey Janicke](#); [Keino Young](#)
Cc: [Ruth M. Porter](#)
Subject: [EXTERNAL] RE: EL21-91: Highly Confidential CEII and Market Sensitive Information - PJM's Responses to FERC Trial Staff First Set of Data Request S-PJM-1.5 - Contains Highly Confidential Market Sensitive PJM Member Information a
Date: Friday, September 22, 2023 11:47:19 AM
Attachments: [Highly Confidential and CEII PJM Black Start Units on Old CRF 2018 and Later First Set of Data Requests S-PJM-1.5.xlsx](#)
[PJM Responses to FERC Trial Staff First Set Data Requests EL21-91.pdf](#)

Thank you Jeff and Keino. I appreciate your time and consideration working through these data request issues. As agreed and in accordance with your message below, attached is the Excel spreadsheet referenced in data request S-PJM-1.5 (see PJM's Responses to FERC Trial Staff First Set of Data Requests attached) which contains highly confidential market sensitive PJM Member information and Critical Energy Infrastructure Information ("CEII"). Regards, Steve

Steven R. Pincus
Managing Counsel, Sr. Director
Office of General Counsel

(610) 666-4370 | C: (610) 496-4753 | Steven.Pincus@pjm.com
PJM Interconnection | 2750 Monroe Blvd. | Audubon, PA 19403

This e-mail message and any attached files are confidential and are solely for the use of the intended recipient

From: Jeffrey Janicke <Jeffrey.Janicke@ferc.gov>
Sent: Friday, September 22, 2023 11:25 AM
To: Pincus, Steven <Steven.Pincus@pjm.com>; Ruth M. Porter <porter@wrightlaw.com>
Cc: Keino Young <Keino.Young@ferc.gov>
Subject: EL21-91: Highly Confidential CEII and Market Sensitive Information

 **External Email! Think before clicking links or attachments.**

Contact the Support Center immediately if you click on a link or open an attachment that appears malicious.

Steve and Ruth,

Thanks for a productive discussion this morning. To confirm, Trial Staff commits not to disclose to anyone else information that PJM provides to Trial Staff in response to data requests in Docket No. EL21-91 that PJM designates as "highly confidential Critical Energy Infrastructure Information" or "highly confidential market sensitive information" except (a) pursuant to the terms of a new protective order resulting from a motion filing by PJM or (b) in the event that PJM's motion for a new protective order is denied, pursuant to the terms of the existing protective order or any successor thereto. In connection with this, PJM commits to promptly distribute to the participants

and file a motion for a new protective order.

Jeff

Jeffrey K. Janicke | Trial Attorney
Federal Energy Regulatory Commission
Office of Administrative Litigation
(202) 502-8227

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official list compiled by the Commission in this proceeding and on the Presiding Administrative Law Judge and Law Clerk in accordance with Section 5(b) of the Uniform Hearing Rules.

Dated at Washington, DC, this 20th day of October 2023.

/s/ Ruth M. Porter
Ruth M. Porter
Wright & Talisman, P.C.
1200 G Street, N.W., Suite 600
Washington, DC 20005