

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

Indicated Generation Owners

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Docket No. EL19-70-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER
OF THE PJM POWER PROVIDERS GROUP AND
THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,¹ the PJM Power Providers Group (“P3”) and the Electric Power Supply Association (“EPSA”)² respectfully submit this Motion for Leave to Answer and Answer (“Answer”)³ in response to the Protest of the Dominion Zone Parties;⁴ the Comments of the Independent Market Monitor (“IMM”) for PJM;⁵ and the Comments of American Electric Power Service Corporation (“AEPSC”).⁶

¹ 18 C.F.R. §§ 385.212; 385.213 (2018).

² The comments contained herein represent the positions of P3 and EPSA as organizations, but not necessarily the views of any particular member with respect to any issue.

³ *See generally* Comments of the PJM Power Providers Group and the Electric Power Supply Association, Docket No. EL19-70-000, filed June 3, 2019.

⁴ Motion to Intervene and Protest of the Dominion Zone Parties, Docket No. EL19-70-000, filed June 3, 2019 (“Dominion Protest”). “Dominion Zone Parties” include: Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia, Old Dominion Electric Cooperative, Northern Virginia Electric Cooperative, Inc., and North Carolina Electric Membership Corporation.

⁵ Comments of the Independent Market Monitor for PJM, Docket No. EL19-70-000, filed June 3, 2019 (“IMM Comments”).

⁶ Comments of American Electric Power Service Corporation, Docket No. EL19-70-000, filed June 3, 2019 (“AEP Comments”). American Electric Power Service Corporation (“AEPSC”), on behalf of its affiliates Appalachian

I. Motion for Leave to Answer

Pursuant to 18 C.F.R. § 385.212 and 18 C.F.R. § 385.213, P3/EPSA respectfully submit this Motion for Leave to Answer and Answer to the above-stated comments and protest.⁷ P3/EPSA believe that this is a case of first impression, as this Petition is the first time in which the Commission has been asked for a Declaratory Order to provide guidance on certain cost-based recovery elements for the provision of reactive power in the PJM Interconnection, LLC's ("PJM") wholesale market. As such, P3/EPSA respectfully request that the Commission accept this Motion for Leave to Answer and Answer in order to contribute to a sufficient record and assist the Commission in its decision-making process.

II. Answer

A. A Declaratory Order Is A Proper Means For Providing Rate Certainty To Generators That Provide Reactive Power In PJM.

The Dominion Zone Parties protest the Indicated Owners'⁸ Petition for Declaratory Order,⁹ stating that the questions contained in the Petition are not appropriate for a Declaratory Order as some of the same questions are currently before the Commission in a separate contested

Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, and AEP Energy Partners.

⁷ Although the Commission's procedural rules do not provide for answers to comments as a matter of right, the Commission has allowed answers where, as here, the answer provides further explanation or otherwise helps ensure a full and complete record. See, e.g., *Empire Pipeline, Inc.*, 164 FERC ¶ 61,076 P 9 (2018), *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,154, at P 14 (2003), on reh'g, 109 FERC ¶ 61,236 (2004); *Williams Energy Mktg. & Trading Co. v. Southern Co. Servs., Inc.*, 104 FERC ¶61,141, at P 10 (2003); *Ameren Servs. Co.*, 100 FERC ¶ 61,135, at P 15 (2002), on reh'g, 103 FERC ¶ 61,178 (2003).

⁸ Ares Management, LLC; Competitive Power Ventures, Inc.; Invenergy Thermal Development LLC; J-Power USA Development Co., Ltd.; Panda Power Generation Infrastructure Fund LLC; Tenaska, Inc.; and Vistra Energy Corp. (collectively, the "Indicated Owners" or "Petitioners").

⁹ *Petition for Declaratory Order, Indicated Generation Owners*, Docket No. EL19-70-000, filed May 3, 2019 ("Petition").

proceeding in the *Panda Stonewall*¹⁰ case. The Dominion Zone Parties further argue that the Petition raises questions of policy, not legal questions, similar to those raised in the *ITC Grid Development*¹¹ case and are therefore not appropriate for disposition through a Declaratory Order. Both contentions are inaccurate.

First, the fact that there is a current reactive power case, *Panda Stonewall*, pending before the Commission only reinforces the Petitioners' claimed need for a Declaratory Order from the Commission. The Dominion Zone Parties do not dispute Petitioners' contention that there has been a plethora of reactive power litigated or settled cases throughout the past twenty years. The Dominion Zone Parties do not attempt to counter Petitioners' assertion that a "significant number of reactive power filings are made each year" and that "more than twenty-five reactive proceedings have been initiated since March 2018, alone."¹² The fact that one such case, the *Panda Stonewall* case, on behalf of one particular generator, is currently pending before the Commission only reinforces the need for a Declaratory Order for the requested guidance to stem the tide of constant litigation and forced settlements over elements of reactive power cost recovery. Additionally, leaving these issues to be litigated on a case by case basis may well lead to the need for all parties interested in the provision of and payment for reactive power in PJM generally to decide they must participate in each individual generator's contested proceeding to ensure that these six cost recovery principles are correctly briefed, argued and adjudicated in every case. This appears to be the outcome that the Dominion Zone Parties foresee, perhaps hoping that the costs and resources

¹⁰ *Panda Stonewall LLC*, Docket No. ER17-1821.

¹¹ *ITC Grid Development, LLC*, 154 FERC ¶ 61,206 (March 17, 2016) "ITC Grid Development."

¹² Petition, p. 2.

needed to do so will dissuade that level of participation in individual proceedings and leave these issues inadequately or incorrectly decided in those cases they hope to influence.

P3/EPSC also submit that the *ITC Grid Development* case is distinguishable from Petitioners' requested Declaratory Order on reactive power compensation. The *ITC Grid Development* case involved issues pertaining to a competitive transmission project selection process. In part, the Commission stated that "Petitions for declaratory order, and orders granting those petitions, 'are based on the specific facts and circumstances presented.' ITC's petition presents a broad issue to the Commission, not an issue arising from specific facts about transmission projects on which ITC proposes to bid."¹³ The circumstances presented in Indicated Owners' Petition are easily distinguishable from the *ITC Grid Development* case.

First and foremost, the Petition is supported not only by the facts espoused in the Petition itself, but is further supported by the extensive presentations provided in the Petition's two attached affidavits, prepared by expert witnesses Michael R. Borgatti ("Borgatti Affidavit") and Dr. Paul Sotkiewicz ("Sotkiewicz" Affidavit).

Furthermore, the Petition is not requesting "a broad issue" pronouncement, as in the *ITC Grid Development* case, but rather seeks guidance from the Commission on discrete, specific elements of project costs and updated methodologies for allocating reactive power costs that a merchant generator could use in establishing individual cost recovery applicable to an individual case. The six issues outlined in the Petition are all based on factual elements that are distinct to a merchant generator providing reactive power in the PJM wholesale market, as outlined in the Borgatti Affidavit:

. . . [A] merchant generator faces a much different risk profile than its interconnected utility. Whereas merchant generators sell most – if not all –

¹³ *ITC Grid Development*, P 45. Citations omitted.

of their energy into highly competitive spot markets, interconnected utilities benefit from captive customers through which the utilities are able to pass through most – if not all – of their operating and capital costs, inflated to recover a guaranteed rate of return. Merchant generators enjoy no similar captive customer base or authorized return, and therefore, are not guaranteed to recoup their costs. As a result, investors in merchant generation facilities face far greater risk and uncertainty, which should be compensated accordingly. The Commission has clearly indicated as much and has acknowledged that a merchant generator faces greater risk. Therefore, merchant generators should use a more representative proxy for their weighted average cost of capital than the conservative interconnected utility approach.¹⁴

These are not policy issues, as the Dominion Zone Parties contend, but rather fact sets pertinent and specific to merchant generators providing reactive power, and for which these generators need updated proxies and guidance from the Commission to use in establishing fair compensation for the service they provide.

While not supporting all six of the requested declarations in the Petition, even AEPSC agrees with the mechanism to attain needed clarity from the Commission. AEPSC posits that two items in particular – Petitioners’ requests to use certain specified indirect costs and the use of full reactive power capability – warrant declarations. As AEPSC explains, these determinations have already been established through the Commission’s regulatory proceedings.¹⁵ They are therefore clearly issues of law, not policy. AEPSC thus states that “. . . despite argument to the contrary, [the Commission] has made findings consistent with the declarations petitioners now seek. Nonetheless, these topics continue to be debated among parties to reactive revenue requirement

¹⁴ Borgatti Affidavit, P 12, p. 4.

¹⁵ *Chehalis Power Generating, L.P.*, 123 FERC ¶ 61,038 (2008), and *Bluegrass Generation Company, L.L.C.*, 121 FERC ¶ 61,018 (2007).

dockets, wasting time and causing unnecessary litigation costs. AEPSC supports the requested declarations as an appropriate means to end the repetitive, unproductive debate of settled law.”¹⁶

Finally, a Declaratory Order providing greater clarity and guidance for reactive power cost recovery is legally appropriate, given that the Commission’s jurisdiction to regulate the rates, terms and conditions for interstate transmission and wholesale sales of electricity is broadly construed under the Federal Power Act. *See* 16 U.S.C. §§ 824, 824d, 824e. The D.C. Circuit Court has specifically found that a “rate” includes “methodologies for allocating costs,” among other items.¹⁷ Petitioners are requesting, in part, that the 20-year old *AEP Methodology*¹⁸ be updated and that further guidance on additional *methodologies for allocating costs* for reactive power be given in a proceeding which allows for comment and participation by all interested parties.

Even if the Petition is found to inadvertently implicate issues of policy for reactive power compensation, the Dominion Zone Parties inaccurately assert that such would render the request for a declaratory order inappropriate. Again, the case relied upon for this contention is easily distinguishable from the Petitioners’ request herein. In the *Texas Eastern Transmission Corp.*¹⁹ case, the Petitioners were essentially requesting that the Commission amend its regulations. The Commission rejected this request, stating that:

Texas Eastern proposes we issue a declaratory order that would, in effect, amend our regulations under Part 157. It would be improper to do so in this proceeding. We currently are reevaluating our Part 157 blanket certificate regulations in light of Order No. 636 and the changes occurring in the natural gas industry. We recognize that following implementation of Order No. 636, the need for pipelines to access gas sources for system supply

¹⁶ AEPSC Comments, pp. 2-3.

¹⁷ *Tenn. Gas Pipeline Co. v. FERC*, 860 F. 2d 446 n.1 (D.C. Cir. 1988).

¹⁸ *American Electric Power Service Corp.*, 88 FERC ¶ 61,141 (1999) (Op. No. 440) (“*AEP Methodology*”).

¹⁹ *Texas Eastern Transmission Corp.*, 62 FERC ¶ 61,196 (1993), (“*Texas Eastern Transmission Corp.*”), p.9.

generally will be supplanted by the need for shippers to access gas supplies, and we are reviewing our current blanket certificate regulations to determine what modifications may be appropriate in view of this change. Nevertheless, until the Commission acts to amend its rules, the extent of construction authorized under a Part 157 blanket certificate will be governed by the currently effective regulations in 18 C.F.R. Sec. 157.201-218 (1991).

Petitioners in the instant case seek no such amendments to the current law, generally, or PJM's Reactive Power Tariff, specifically. Rather, Petitioners seek clarification and direction on the types of costs and rate-making methodologies generators can use for recouping costs under the current law. Providing this type of general guidance – even if the issues to be addressed are viewed as policy issues – is precisely the function of the Commission in ruling on a Petition for Declaratory Order.²⁰ Therefore, the declarations contained in the Petition, contrary to the Dominion Zone Parties' protestations, are appropriate and allowed under both the law and prior Commission orders. For all of these reasons, the Commission should support Petitioners' requested declarations.

B. The Commission Should Reject The IMM's Suggestion To Change The Compensation Mechanism For Reactive Power.

The IMM notes that “[T]his case is a case of first impression, and it should be decided so as to preserve RTO independence and to protect the public interest.”²¹ From the IMM's perspective, it is “a matter of common sense and good policy” to “rely on markets to compensate generators” for reactive power capability.²² The IMM's attempts to circumvent the Commission's long-standing practice of utilizing cost-of-service ratemaking mechanisms to compensate

²⁰ *Cal. Indep. Sys. Operator Corp.*, Order Granting Petition for Declaratory Order, 119 FERC ¶ 61,061, at P 92 (2007).

²¹ IMM Comments, p. 3.

²² *Id.* p. 27.

generators for reactive power in favor of a full market-based approach that does not currently exist for reactive power in PJM should be rejected. This argument is clearly outside the scope of the Petition, or the issues raised in or by the Petition, and is contrary to FERC precedent and policy on the compensation for reactive power. And contrary to the IMM claims that cost-based pricing is in PJM's tariff merely as some relic of vertically-integrated utility operations, the Commission has reiterated the appropriateness of cost-based pricing within ISO/RTO markets and competitive wholesale power markets since the issuance of Opinion No. 440 establishing the *AEP* methodology in 1999.²³

As the Dominion Zone Parties point out, “. . . reactive power is not a competitive product. When merchant generators seek reactive compensation, they are resorting to cost-based rates, the recovery of which is not dependent on market forces.”²⁴

The IMM does not dispute that since the late-1990s, the Commission has prescribed a cost-based methodology to compensate generators for providing reactive power service.²⁵ PJM's Tariff for reactive supply is also based on a cost-based revenue requirement for supplying reactive power service.²⁶ Rather than pursuing the IMM's hypothetical market approach for reactive power compensation, the only reasonable or legal approach is for the Commission to act on the Petition

²³ See e.g., *Principles for Efficient and Reliable Reactive Power Supply and Consumption*, Commission Staff Report, Docket No. AD05-1 (Feb. 4, 2005); *Payment for Reactive Power*, Commission Staff Report, Docket No. AD14-7-000 (April 22, 2014).

²⁴ Protest of the Dominion Zone Parties, p. 13.

²⁵ Petition, pp. 1-2, 10.

²⁶ PJM Open Access Transmission Tariff, Schedule 2, Reactive Supply and Voltage Control from Generation or Other Sources Service.

to provide clarity to generators, customers, Commission Trial Staff, and other parties on the six discrete legal issues contained in the Petition.

III. Conclusion

For the foregoing reasons, P3 and EPSA respectfully request that the Commission consider this Motion for Leave to Answer and Answer, and provide the requested declarations as contained in the May 3 Petition.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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June 18, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington DC, this 18th day of June, 2019.

On behalf of the PJM Power Providers Group and the
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