

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

Public Service Commission of West Virginia)	Docket No. ER23-45-000
)	
v.)	
)	
PJM Interconnection L.L.C.)	

COMMENTS OF THE PJM POWER PROVIDERS GROUP

Pursuant to Rule 212¹ of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, the PJM Power Providers Group (“P3”)^{2 3} respectfully submits these comments in response to the March 8, 2023 Complaint (“Complaint”) filed before the Commission by the Public Service Commission of West Virginia (“PSC WV”) against PJM Interconnection, L.L.C. (“PJM”).⁴ In particular, the PSC WV’s Complaint alleges, in part, that PJM has violated and continues to violate Sections 3.1 and 8.2.2 of its Operating Agreement, FERC Order Nos. 2000⁵ and 719⁶, as well as the undue discrimination prohibition in

¹ 18 C.F.R. §385.212 (2022).

² P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. (“PJM”) region. Combined, P3 members own over 83,000 MWs of generation assets and produce enough power to supply over 63 million homes in the PJM region covering 13 states and the District of Columbia. The comments contained herein represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue. For more information on P3, visit www.p3powergroup.com

³ P3 timely submitted a document-less Motion to Intervene on March 16, 2023.

⁴ Public Service Commission of West Virginia v. PJM Interconnection, L.L.C., dated March 8, 2023, Docket No. ER23-45-000 (“Complaint”).

⁵ Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (“Order No. 2000”), order on reh’g, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

⁶ Wholesale Competition in Regions with Organized Electric Markets, Order No. 719, 125 FERC ¶ 61,071 (2008) (“Order No. 719”), order on reh’g, Order No. 719-A, 128 FERC ¶ 61,059 (2009), order on reh’g, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

Sections 205⁷ and 206⁸ of the Federal Power Act (“FPA”) by not allowing the PSC WV to observe and attend PJM’s Liaison Committee (“LC”) meetings. On March 10, 2023, the Commission issued a Combined Notice of Filing #1, setting March 28, 2023, at 5 p.m. Eastern Time as the date and time for motions to intervene or protests.

As a matter of principle, P3 supports the active participation of state regulatory commissions (“state commissions,” “State” or “States”) in PJM processes. PJM works best when state commissions are informed and engaged in PJM matters so PJM’s and States’ policies can complement, rather than contradict, each other. Ideally, States, PJM members and PJM work together to achieve mutually held goals of reliable and affordable electricity for consumers throughout the PJM region.

Despite the shared high-level goals, state commissions, by their nature, are unique stakeholders whose authority and interests are different from PJM members. Unlike PJM Members, state commissions do not own assets or pay PJM bills. Among other things, state commissions do not vote at PJM stakeholder meetings, are not signatories to the PJM Operating Agreement and do not have exposure to market defaults. Conversely, PJM Members lack regulatory authority to order PJM utilities to take certain actions. PJM Members will never be called upon to vote on the use of eminent domain for a transmission project or mandate charges be passed on to consumers. That said, despite the differing relationships with PJM, PJM Members, the PJM Board and PJM States all benefit from appropriate, open and transparent communications with each other.

For sound reasons, PJM state commissions have chosen to not become PJM Members. Most state commissions have recognized that their statutory responsibilities do not allow them to

⁷ 16 U.S.C. §§ 824d.

⁸ 16 U.S.C. §§ 824e.

engage in matters that result from PJM actions that could come before them in a proceeding. For these and other reasons, state commissions have structured a relationship with PJM that includes regular in-person meetings with the PJM Board and interaction with PJM Board Members through the Organization of PJM States (“OPSI”) that are separate and apart from opportunities provided to PJM Members. Since PJM Members are not involved in these regular meetings between the PJM Board and the PJM States, PJM Members are provided the Liaison Committee forum as a means for the PJM Members to communicate directly with the PJM Board. This structure is respectful of the different roles that PJM Members and PJM state commissions play while allowing access to the PJM Board for both constituencies.

The Complaint seeks to upend this balance through a tortured interpretation of the PJM Operating Agreement that the Commission should reject. P3 submits that PJM has correctly followed FERC precedent and its Operating Agreement, as well as all applicable rules, laws and procedures, with respect to both its stakeholder processes, in general, and the conduct of its Liaison Committee, in particular. State commissions have the ability to interact with the PJM Board multiple times a year and should not be able to use a backdoor path of becoming *ex officio* PJM Members in order to gain access to Liaison Committee meetings. As such, the PSC WV’s request to observe and attend the PJM LC meetings should be denied and its Complaint should be dismissed.

That said, if the Commission is inclined to take action on the Complaint, it should do so in the broader context of the PJM Board, PJM Members and State relations. If the Commission would like to have a broader conversation about interactions between the PJM Board, the PJM Members and PJM States, P3 would welcome that conversation and is open to the possibility that

a better structure could be achieved. However, simply granting this Complaint, without consideration of the broader balance, would be an error that the Commission should not make.

I. BACKGROUND

Like other states in the PJM region, the PSC WV is an active stakeholder in the PJM meetings.⁹ On July 19, 2021, the PSC WV became an *ex officio* member of PJM’s Standing Committee, pursuant to Section 8.2.2 of the PJM Operating Agreement.¹⁰ It is important to note that Section 8.2.2 of the Operating Agreement only allows “regulatory authorities” (of which the PSC WV is one) to serve as non-voting *ex officio* members on PJM Standing Committees. Section 8.2.2 provides a path for the PSC WV to participate in PJM meetings but does not confer membership status in PJM to any entity that uses this section.

PSC WV filed this Complaint following its February 14, 2022, report (“Report”) submitted to the Commission’s Enforcement Hotline. The PSC WV’s Report alleged that PJM violated its Tariff and Manuals in connection with the PSC WV’s status as an *ex officio* non-voting member of the PJM Standing Committees and its request to attend the PJM LC meetings. On March 15, 2022, PJM responded to the PSC WV Report, in part, by asserting that the PSC WV failed to demonstrate that PJM violated its Operating Agreement, Tariff, or any other FERC requirement or regulation (“PJM Report Response”).

II. COMMENTS

A. PJM Has Not Violated Its Operating Agreement and Manual Rules in Its Decision To Limit State Commissions’ Participation In The PJM Stakeholder Process To Attendance At the Standing Committees and Board Access At The General Sessions.

⁹ Complaint, p. 9.

¹⁰ PJM lists 14 PJM *ex officio* members on its website – all of which are state consumer advocates. See, <https://www.pjm.com/about-pjm/member-services/member-list>. State consumers advocates are *ex officio* members of PJM pursuant to Section 8.2.3 of the Operating Agreement and, therefore, pay PJM dues and have voting right at PJM meetings. The PSC WV, in July of 2021, elected to join PJM’s Standing Committees pursuant to Section 8.2.2 as an *ex officio* member and, as such, does not pay dues or have voting rights at PJM meetings.

1. The Liaison Committee is not a Standing Committee.

The PSC WV inaccurately asserts that the Liaison Committee is a Standing Committee of PJM.¹¹ PJM tariffs, manuals and operating agreement provide nothing that supports this conclusion.

Specifically, PSC WV correctly references the definition in the Operating Agreement for “Standing Committees” as “the Members Committee, the committees established and maintained under Operating Agreement, section 8.6, and such other committees as the Members Committee may establish and maintain from time to time.”¹² It also correctly cites the Operating Agreement section 8.6, that provides that:

The Members Committee shall establish and maintain the Markets and Reliability Committee as a Senior Standing Committee. The Members Committee also shall establish and maintain the Market Implementation Committee (under the Markets and Reliability Committee), and Planning Committee and Operating Committee (both under the Markets and Reliability Committee) as Standing Committees. The Members Committee may establish or dissolve other Standing Committees from time to time.¹³

By the PSC WV’s own acknowledgement, PJM’s Operating Agreement does not define the Liaison Committee as a Standing Committee. Therefore, PJM has not violated its Operating Agreement by not allowing the PSC WV to attend Liaison Committee meetings.

The PSC WV argues, however, that PJM’s website appears to imply that the Liaison Committee is a Standing Committee. This also is untrue. Per the PSC WV, PJM’s website provides a drop-down menu listing various “Committees,” including both Standing Committees and the other committees, including the Liaison Committee. Because the Liaison Committee is listed under “Committees,” PSC WV argues that it is a Standing Committee.¹⁴ The inference is that

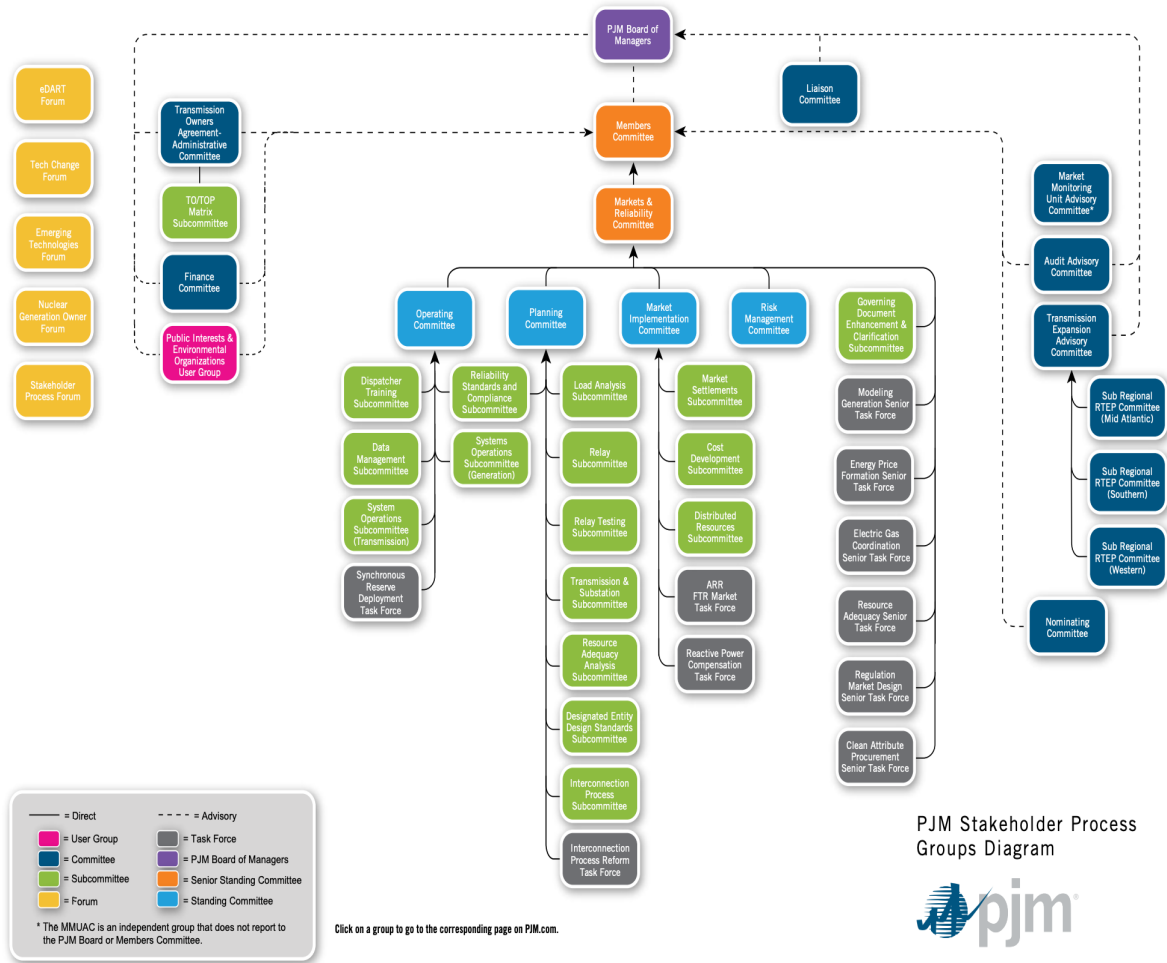
¹¹ Complaint, pp. 13-15.

¹² PJM Operating Agreement, OA Definitions – S – T.

¹³ PJM Operating Agreement, Section 8.6.

¹⁴ Complaint, p. 10 (emphasis added).

because the Liaison Committee is listed under “Committees” on PJM’s webpage, along with several Standing Committees, it must be a “Standing Committee.” This argument, of course, is a stretch. PJM’s website clearly lists all of its committees, with Standing Committees depicted by orange and light blue designations, while other, more general committees, such as the Liaison Committee, are listed in a darker blue.



The PSC WV also correctly cites the Liaison Committee Charter, that it acknowledges is posted on the PJM website, which specifically references only the inclusion of “Members” for its meetings:

To foster better communications between the PJM Board of Managers (“Board Members”) and the PJM Members (“Members”), the Members and the Board agree to create a Liaison Committee to: (i) ensure open exchanges and information sharing on topics of relevance to the Members and the Board of Managers to promote timely and adequate communications and informed decisions by the Board of Managers, and (ii) allow Members to understand: (a) how the PJM Board of Managers generally considers matters that come before it as a matter of process and (b) the factors that produce its decisions, without requiring disclosure of actual discussions at PJM Board meetings, and in no way attempting to compromise the Board’s independence or its exercise of its business judgment.

Per sections 7.7 and 11.1 of the Operating Agreement, this process is intended to allow member interests to be heard while avoiding (1) undue influence by any particular Member or group of Members on the operation of PJM and (2) Member management of the business of PJM.¹⁵

The PSC WV is not a “Member” of PJM. PJM’s Operating Agreement defines “Member” as:

“an entity that satisfies the requirements of Operating Agreement, section 11.6 and that (i) is a member of the LLC immediately prior to the Effective Date, or (ii) has executed an Additional Member Agreement in the form set forth in Operating Agreement, Schedule 4.”

As an *ex officio* non-voting member, the PSC WV is free to attend any Standing Committee meetings of PJM. The PSC WV is also free to elect to become a Member of PJM. However, the PSC WV cannot use its *ex officio*, non-voting designation to thwart the clear requirements of PJM’s Operating Agreement and Manuals in order to attend Liaison Committee meetings.

¹⁵ Complaint, at p. 10, citing 8 PJM Interconnection, L.L.C., Liaison Committee Charter, Mission at 1, available at <https://www.pjm.com/-/media/committees-groups/committees/lc/postings/charter.ashx>.

2. There is No Undue Discrimination Regarding Membership of PJM's Liaison Committee.

The PSC WV argues that PJM is discriminating against *ex officio* non-voting members, such as state commissions like itself, because it allows State Consumer Advocates, who are *ex officio* voting members, to attend Liaison Committee meetings. P3 submits no such discrimination is taking place.

First, as PJM notes, the State Consumers Advocates were permitted to attend LC meetings because under the Operating Agreement, section 8.2.3, the State Consumer Advocates have voting rights in the End-User Customer Sector, unlike the regulatory authorities who are *ex officio* non-voting Standing Committee members, including the PSC WV.¹⁶ There is no discrimination between these two *ex officio* members due to the fact that they are not similarly situated. The State Consumer Advocates have voting rights; the *ex officio* state commissions do not. Therefore, there is no discrimination between these two, different *ex officio* members.

Second, the PSC WV has not shown that there is any Section 206 undue discrimination that negatively affects any particular utility's electric transmission or wholesale sale customers.¹⁷ As the Liaison Committee's focus is to, in part, "foster better communications between the PJM Board of Managers and the PJM Members," there is no instance of final adjudicatory matters of which have any impact upon wholesale customers. At the very least, the PSC WV has neither alleged nor shown that there is a discriminatory matter that is otherwise in need of protection.

B. The PSC WV Has Meaningful Participation With The PJM Board That More Than Satisfies PJM's Order 719 Obligations.

This Commission has previously found that PJM has satisfied FERC Order 719's four responsiveness criteria, including reforms PJM implemented to establish the Liaison Committee

¹⁶ PJM Response to Report, p. 7.

¹⁷ Pub. Serv. Co. of Indiana v FERC, 575 F.2d 1204, 1212 (7th Cir. 1978).

and to allow all stakeholders, including state commissions, access to the PJM Board.¹⁸ Importantly, the Commission found that Order No. 719 does not require the PJM Board to make certain specified changes requested at the time by the Illinois Commerce Commission (“ICC”), including, in part, “placing a state commission representative on PJM’s Liaison Committee”¹⁹ and conducting open meetings.²⁰ Thus, the Commission found that:

The Illinois Commission argues that PJM’s business practices and procedures fail to provide entities that are not PJM members (namely state commissions) with meaningful participation and representation. We note, however, that under PJM’s Operating Agreement, at section 8.2.2 (Regulatory Authorities), the Commission and other federal agencies with regulatory authority over a member, and each state electric regulatory commission with regulatory jurisdiction within the PJM region, are permitted to nominate one representative to serve as an ex officio non-voting member on each of the standing committees. As the Commission has noted previously, moreover, the Organization of PJM States, Inc. (OPSI) allows PJM to more effectively and efficiently coordinate with the regulatory commissions within the PJM footprint by providing a conduit for information between the states and the RTO. OPSI has representatives and members attending various PJM meetings, including meetings of the Members Committee, the Planning Committee and the Transmission Expansion Advisory Committee.²¹

In fact, as PJM notes, the PJM Board meets separately with OPSI three times a year.²² These periodic meetings between state commissioners and staff through OPSI and the PJM Board is also required in the PJM-OPSI Memorandum of Understanding, dated June 1, 2005, which provides that:

The PJM Board of Managers will meet at least annually with OPSI to discuss matters of mutual interest and at such other times as may be mutually agreed upon. PJM will participate in periodic or *ad-hoc* meetings

¹⁸ PJM Interconnection, L.L.C, 133 FERC ¶ 61,071 (2010) (“PJM Order 719”)

¹⁹ *Id.*, P 21.

²⁰ *Id.* P 53.

²¹ *Id.*, P 55, citing: “Additionally, section 8.2.3 of the PJM Operating Agreement provides that each state consumer advocate may nominate one representative to serve as an ex officio member on each of the standing committees. Upon a written request by a state consumer advocate to PJM and a fee, a state consumer advocate may designate a representative to each of the standing committees who will be entitled to vote in the end-use customer sector in senior standing committees (i.e., the Members Committee and Markets and Reliability Committee). Further, the state consumer advocate will have no liability under the Operating Agreement, other than the annual fee.” And citing: PJM Interconnection, L.L.C., 113 FERC ¶ 61,292, at P 39 (2005) (Order on Funding Mechanism for Organization of PJM States, Inc.).

²² PJM Response to Report, p. 2.

or conference calls with OPSI on a mutually agreed upon basis as may be requested by either OPSI or PJM. OPSI representatives will meet with PJM staff to discuss issues of mutual interest and to plan agendas for the joint meetings between OPSI and the PJM Board. The goal of such meetings and conference calls will be to increase communication on relevant topics of interest and to facilitate working relationships among the parties.²³

OPSI, which includes the PSC WV, does, in fact, meet with the PJM Board at least several times per year. For example, recently, OPSI had a two-hour dinner meeting with the PJM Board during the NARUC February meeting on February 13, 2023, in Washington, D.C. This meeting followed the Liaison Committee two-hour meeting and an hour-and-15-minute reception earlier that same day. Then OPSI had an hour-and-a-half follow-up meeting with the PJM Board on February 14, 2023.²⁴ In other words, during a 48-hour period two months prior to the filing of this Complaint, the entire PJM membership had less interaction with PJM Board members than the 14 state regulatory commissions in the PJM region.

This Commission's prior findings that PJM has satisfied its Order 719 requirements continue to be satisfied, in part, given the fact that PJM ensures that all PJM Members and state commissions have meaningful access to the PJM Board.

C. State Commission Participation In PJM's Liaison Committee Meetings Would Defeat Its Purposes And Have A Chilling Effect On Other Members' Participation.

PSC WV argues that state regulatory commissions "should not be specifically excluded from observing any Liaison Committee meetings with the Board," because doing so "would simply

²³ Memorandum of Understanding between PJM Interconnection, L.L.C. and the Organization of PJM States, Inc., dated June 5, 2005, P 2. https://opsi.us/wp-content/uploads/2020/02/OPSI_PJM_MOU_executed_June_8_2005-1-1.pdf

²⁴ <https://www.pjm.com/-/media/about-pjm/who-we-are/board-meetings/2023/20230212/20230212-agenda.ashx>

contradict any pretense that there is a real desire to foster regulator confidence through transparency.”²⁵ This allegation misses two fundamental points.

First, the purposes of the Liaison Committee bear repeating, which include:

- Fostering better communications between the PJM Board of Managers and the PJM Members;
- Ensuring open exchanges and information sharing on topics of relevance to the Members and the Board of Managers to promote timely and adequate communications and informed decisions by the Board of Managers; and
- Allowing Members to understand:
 - how the PJM Board of Managers generally considers matters that come before it as a matter of process and
 - the factors that produce its decisions, without requiring disclosure of actual discussions at PJM Board meetings, and in no way attempting to compromise the Board’s independence or its exercise of its business judgment.

Arguably, the PJM Members have decided that this targeted communication and information sharing would be compromised through a “chilling effect” if state regulators were allowed to observe these discussions. Topics at the Liaison Committee would have to avoid any pending state proceedings and potentially FERC proceedings, since some states vote on FERC positions at their public open meetings. Such concerns do not exist now but would necessarily need to be considered if state (or federal) regulators participated in PJM Liaison Committee, potentially undermining the LC charter of “open exchanges and information sharing.”

Moreover, with respect to transparency, unlike the Liaison Committee, the agendas for the OPSI/PJM Board meetings are never public or posted. The agenda for the February 13, 2023, Liaison Committee meeting was, in fact, posted for the public to see – as is the case for all of the

²⁵ Complaint, p. 22.

Liaison Committee meetings.²⁶ Therefore, the need for more transparency, if any, resides with the OPSI/PJM Board meetings, not with the PJM Liaison Committee meetings.

II. CONCLUSION

For all of these reasons, PJM has not violated FERC orders or precedent, its Operating Agreement and/or its Manuals and rules regarding the governance and structure of the PJM Liaison Committee. The PSC WV's Complaint should therefore be denied and dismissed. However, should the Commission desire to revisit the overall structure of interactions between PJM States, PJM Members and the PJM Board, P3 is open to that broader conversation. Ideally, such a conversation would yield a process in which PJM Board Members, PJM States and PJM Members would be afforded meaningful and equal opportunities to share information, thoughts and opinions. However, as a necessary precursor to these broader conversations, the Complaint should be dismissed.

Respectfully submitted,

On behalf of The PJM Power Providers Group

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²⁶ PJM Liaison Committee Meeting Agenda, February 13, 2023: <https://www.pjm.com/-/media/committees-groups/committees/lc/2023/20230213/agenda.ashx>

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, D.C., this 28th day of March, 2023.

Laura Chappelle
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