UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Long-Term Firm Transmission Rights In Organized Electricity Markets	Docket No. RM06-8-000

MOTION FOR LEAVE TO REPLY AND JOINT REPLY OF THE AMERICAN PUBLIC POWER ASSOCIATION AND THE TRANSMISSION ACCESS POLICY STUDY GROUP

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,[1] the American Public Power Association ("APPA") and the Transmission Access Policy Study Group ("TAPS") move for leave to reply and jointly reply to the Answer filed by PJM Interconnection, L.L.C. ("PJM") on September 13, 2006,[2] to the rehearing requests that APPA and TAPS each filed on August 21, 2006.

The Commission should reject PJM's Answer; it is unauthorized and PJM has offered no good cause why the Commission should accept the unauthorized answer more than three weeks after APPA and TAPS timely filed their requests for rehearing. If the Commission does not reject PJM's Answer, APPA and TAPS request that the Commission grant leave to file the joint reply set forth below. Contrary to PJM's assertion (Answer at 1 n.1), its Answer neither "helps to clarify issues [nor] facilitates the creation of a complete record." Instead, PJM provides interpretations of Section 217 of the Federal Power Act unsupported by the language and arguments unsupported by facts.

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[1] 18 C.F.R. §§ 385.212 and .213 (2006).

[2] "Motion for Leave to File Answer and Answer of PJM Interconnection, L.L.C.," September 13, 2006 ("Answer").

If the Commission does not reject PJM's Answer, it should accept this limited reply that sets right that which PJM's Answer obscures or mischaracterizes.

I. PJM'S ANSWER IS UNAUTHORIZED AND SHOULD BE REJECTED

Rule 713(d)(1) of the Commission's regulations strictly prohibits answers to requests for rehearing: "The Commission will not permit answers to requests for re-hearing."[3] Unlike Rule 213 – pursuant to which PJM incorrectly filed its motion – Rule 713 does not provide discretion to the decisional authority to accept answers to requests for rehearing upon a showing of good cause.[4] PJM's cited authority is therefore inapposite to the question of whether it should be permitted to file an answer to requests for rehearing filed by APPA and TAPS. In neither of the cases cited by PJM did the Commission grant a waiver of Rule 713's prohibition of answers to requests for rehearing. *See Idaho Power Co.*, 95 F.E.R.C. ¶ 61,482, at 62,717 (2001) (permitting Idaho Power's answer to a protest pursuant to Rule 213); *Cambridge Elec. Light Co.*, 95 F.E.R.C. ¶ 61,162, at 61,523 (2001) (finding good cause to permit Cambridge Electric's answer to a protest pursuant to Rule 213).[5]

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[3] 18 C.F.R. § 385.713(d)(1) (2006); *see also, e.g., Southern Illinois Power Coop. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 116 F.E.R.C. ¶ 61,117, P 7 (2006) ("Rule 713(d) of the Commission's Rules of Practice and Procedure…prohibits an answer to a request for rehearing. We will, therefore, reject the answers.") (internal citations omitted).

[4] *Compare* 18 C.F.R. § 385.713(d)(1) (2006) *with* 18 C.F.R. § 385.213(a)(2) (2006).

[5] While PJM could have sought waiver of the requirements of Rule 713, it did not do so. Had PJM sought such a waiver, its claim that its filing will "clarify certain issues raised in the rehearing requests" (Answer at 1 n.1) falls well short of the "compelling circumstances" that the Commission has previously required in order to waive Rule 713's prohibition on answers to requests for rehearing. *See, e.g., Algonquin Gas Transmission Co.* 65 F.E.R.C. ¶ 61,019, at 61,271 (1993) (waiving Rule 713 upon a finding of "compelling circumstances" where the request for rehearing presented a "litany of new facts, and conclusions" for the first time on rehearing).

Even if PJM's pleading could be properly characterized as an answer pursuant to Rule 213(a)(2), PJM has not shown good cause for the Commission to waive its general rule prohibiting such filings. PJM's only justification for acceptance of its pleading is its claim that its Answer will "clarify certain issues raised in the rehearing requests thereby creating a more complete record that will assist the Commission in this docket."[6] This rationale – in the absence of any demonstration by PJM that its Answer is actually needed to correct misrepresentations or misstatements made in the rehearing requests – would effectively rewrite the Commission's rule to allow answers to requests for rehearing in almost any circumstance.

Furthermore, PJM has offered no explanation for its failure to file its Answer in a timely manner. Pursuant to Rule 213(d)(1), answers must be filed within 15 days of the filing of the motion to which they respond.[7] APPA and TAPS filed their requests for rehearing on August 21, 2006. PJM, however, failed to file its Answer until September 13, 2006 – more than three weeks after those filings and eight days out of time. Principles of fairness and equity dictate that the Commission should reject PJM's Answer as untimely.

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[6] Answer at 1 n.1.

[7] 18 C.F.R. § 385.213(d)(1) (2006).

II. REPLY

A. PJM's Arguments Against Limiting Guideline 5 to Ensure Long-Term Rights are Available to LSEs with Long-Term Power Arrangements are Without Merit

1. PJM's Statutory Construction Is Contrary to the Plain Language of Section 217 of the Federal Power Act

PJM's statutory argument – consigned to footnote 6 in the Answer – is that Congress accorded no priority for LSEs with long-term power supply arrangements:

> Section 217(b)(4) establishes the requirement to make LTTRs [long-term transmission rights] available for long-term power supply arrangements to meet the needs of LSEs (i.e., their service obligations), but does not require a preference for holders of long-term contracts relative to other LSEs . . . .

This argument is contrary to the plain language of Sections 217(b)(4). Section 217(b)(4) creates an express priority for LSEs with long-term service obligations:

> The Commission shall exercise the authority of the Commission under this chapter in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and *enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.* [Emphasis supplied.]

The language of Section 217(b)(4) is unequivocal: The Commission *shall exercise* its authority to enable load-serving entities that meet their service obligations *with long-term power supply arrangements* to obtain long-term transmission rights, or their financial equivalents. If the Commission adopts the broader priority for all LSEs with a service obligation and there are not enough FTRs to meet the needs of LSEs with long-term power supply arrangements to meet their service obligations, the Commission will have

violated the clear mandate of Section 217(b)(4). This is a point made by APPA in its Request for Rehearing (at 9) to which PJM has not responded.[8]

The weakness of PJM's statutory argument is highlighted by its reliance (Answer at 3-4 n.6) on Section 217(b)(2):

> Section 217(b)(2) states that LSEs are entitled to use firm transmission rights to the extent necessary to meet the service obligation. This section establishes a general LSE preference, but does not establish a preference for LSEs with long term supply contracts. … [T]he preference is established in 217(b)(2), which does not give a priority based on supply contract term.

But Section 217(b)(2), which pertains to LSEs' continued use of firm resource-to-load transmission rights existing as of the date of enactment, does not apply to PJM and other RTOs with organized markets to which this Congressionally-mandated rulemaking applies; rather Section 217(c) expressly exempts these RTOs from direct application of Section 217(b)(1)-(3), leaving MISO alone subject to policies of these subsections. Section 217(b)(2) cannot be used by PJM to read long-term power supply arrangements out of the express language of Section 217(b)(4), which *does* apply to PJM. [9]

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[8] *See also* TAPS Rehearing at 4-7. PJM's argument that Section 217(b)(4) creates no preference at all is also inconsistent with the Commission's repeated findings and the overarching goal in Order No. 681: to provide LSEs with the LTTRs they need to support the long-term power supply arrangements they use to meet their service obligations. *See, e.g.*, *Long-Term Firm Transmission Rights in Organized Electricity* Markets, Order No. 681, 71 Fed. Reg. 43,564 (Aug. 1, 2006), III F.E.R.C. Stat. & Regs. ¶ 31, 226, P 2 (to be codified at 18 C.F.R. pt. 42), *corrected*, 71 Fed. Reg. 46,078 (Aug. 1, 2006) ("[L]ong-term firm transmission rights must be made available with terms (and/or rights to renewal) that are sufficient to meet the reasonable needs of load serving entities to support long-term power supply arrangements used to satisfy their service obligations"); *id.* at P 16 ("The guidelines we adopt in this Final Rule are designed and intended primarily to ensure that the long-term firm transmission rights that are made available by transmission organizations … have characteristics that will support a long-term power supply arrangement."); *id.* at P 260 ("…[O]ur focus is providing load serving entities with long-term power supply arrangements to meet their service obligations with the opportunity to obtain long-term firm transmission rights that will support the financing and construction of new infrastructure.").

[9] *See* Order No. 681 at P 81 (interpreting Section 217(c)).

Perhaps recognizing the flaws in its arguments, PJM attempts to hedge its bet by adding the following (Answer at 4 n.6):

> Thus, provided the directive of 217(b)(4) can be implemented in a manner that provides LTTRs for LSEs with a native load service obligation, regardless of the term of the supply arrangements, this is consistent with EPAct and FPA Section 217. The revisions to Guideline 5 reflect this correct interpretation of the relevant statutory authorities and, as described in the discussion of PJM's LTTR Proposal in the body of this answer, LTTRs can be provided to meet the reasonable needs of native load without consideration of the term of the power supply contracts – i.e., it is possible to accommodate both long and short-term power supply arrangements.

These two sentences appear to argue that there will be no conflict between PJM's interpretation of a Section 217(b)(2) priority and the clear mandate of Section 217(b)(4) as long as there are enough LTTRs to accommodate both long-term and short-term power supply arrangements. This is tautological: there will be no conflict between the two provisions if there is no conflict. In fact, the number of LTTRs is not infinite, as PJM's Answer itself stresses at 9-10 in advocating (wrongly, as discussed in Part B below) for limiting the priority to LSEs within an RTO. In any event, the Commission's revision to Guideline 5 permits RTOs to propose reasonable limits on the amount of existing capacity used to support LTTRs. If, as is the case today in PJM, where there are not enough Auction Revenue Rights ("ARRs") to go around and certain LSEs are having their ARRs dramatically cut, there *is* a clear conflict and, under PJM's interpretation, the Congressional intent embodied in Section 217(b)(4) will be frustrated.

2. PJM's Policy Arguments and Suggestions that PJM's LTTR Proposal Obviates All Concerns Are Incorrect

PJM raises several policy arguments against the priority for LSEs with long-term power supply arrangements, interspersed with arguments that its LTTR proposal (filed in

Docket No. ER06-1218-000)[10] obviates any concerns about the dilution of LTTRs that may be caused by the opening of the priority to all LSEs with service obligations. These arguments, if the Commission considers them at all, should be rejected.

PJM argues (Answer at 3) that limiting the priority to LSEs with long-term power supply arrangements to meet their service obligations will "put the Commission in the anomalous role of making normative distinctions between similarly situated LSEs . . . based solely on the length of contracts underlying their resource portfolios." There is nothing anomalous about the Commission drawing such a distinction. First, it is a distinction mandated by Congress. As such, the Commission has no discretion but to draw that distinction. Second, in the context of "long-term" transmission rights, distinctions drawn on the basis of the duration of underlying agreements is entirely appropriate. The Commission has drawn such distinctions. In *Midwest Independent Transmission System Operator, Inc. ("MISO"),* 114 F.E.R.C. ¶ 61,117, *reh'g denied*, 115 F.E.R.C. ¶ 61,162 (2006), the Commission restricted FTRs available to market participants with less-than-seasonal network resources in order to accommodate the needs of those with longer-term commitments. 115 F.E.R.C. ¶ 61,162 at P 10. The Commission further found that an additional benefit of so limiting the availability of FTRs was that "[b]y preserving the congestion hedge for these customers, the FTR allocation will facilitate planning and expansions for long-term supply arrangements." *Id.* [11]

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[10] As discussed below, PJM's LTTR filing is a proposal by which ARRs would be made available for one year with what PJM believes, and others contest, are adequate assurances that one-year ARRs will be available in each of the succeeding ten years.

[11] *See also* TAPS Rehearing at 8-9 (demonstrating why tying long-term rights to long-term power resources is not an undue preference); APPA Rehearing at 9-10.

PJM's argument that it would be put to an administrative burden if it had to monitor LSE long-term power supply arrangements fails for the same reasons. If the distinction is mandated by Congress, whatever burden that is imposed upon PJM cannot be considered undue. Moreover, PJM's assertions of "administrative burden" are entirely unsupported and unexplained. PJM has provided no facts or detailed explanation to support this claim. All that would appear to be required is for PJM to evaluate the duration of the power supply arrangements to determine whether they meet Commission criteria for "long term." Would this be more burdensome than, for example, PJM accepting and verifying the designation of network resources? The two tasks would appear comparable. Indeed, PJM's claim of burden is belied by its insistence on at least a ten-year power supply commitment as a requirement for new or alternative Stage 1 rights under its own LTTR proposal. *See* PJM Answer at 6 n.12.

PJM appears to suggest (Answer at 4) that there will be little if any need to prioritize between LSEs because "[t]he prospective viability of such rights is protected by linking the feasibility of the rights to the transmission planning process." While APPA and TAPS certainly support such a link, simply saying it does not make it so. The PJM LTTR proposal would appear to link feasibility to the transmission planning process, but at best, PJM can direct that a transmission facility be built; that does not ensure that the facility will be built or placed in service in time to ensure that all LSEs obtain the ARRs they require. If the facility is delayed, not built, or the ARRs are otherwise not available for whatever reason, the LSE with short-term power supply arrangements can adjust those arrangements to compensate for the unavailable ARRs. The LSE with an ownership interest in a power plant or a ten-year unit purchase cannot adjust its plans

and, therefore, could face significant unhedged congestion because the available ARRs must be shared with LSEs without long-term power supply arrangements. Such a result would be clearly inconsistent with the mandate of Section 217(b)(4).

PJM also fails to explain why LSEs with no long-term power supply arrangements need LTTRs. LSEs that choose to meet their service obligations with short-term resources would not appear to have a need for long-term transmission rights; their needs can be met by annual FTRs. As PJM acknowledges (Answer at 7), those entities with short-term resources have the flexibility to change their resources to adapt to changing circumstances and economics. An LSE that meets its service obligation with resources of a year or less in duration does not need a 10 year LTTR that locks it to a single source or defined sources.

PJM asserts (Answer at 4-5) that its LTTR proposal in Docket No. ER06-1218-000 "effectively addresses the priority issue" without limiting the availability of ARRs to LSEs with long-term power supply arrangements. In effect, it is arguing that the Commission should not correct an erroneous interpretation of the priority accorded by Section 217(b)(4) on the *assumption* that PJM's LTTR proposal, currently in litigation in another docket, will be found just and reasonable. The Commission should reject this gambit. Arguments predicated upon the justness and reasonableness of PJM's proposal must await Commission decision on that question, a determination hardly assured given its departure from the Section 217(b)(4)'s directive,[12] the criticisms of PJM's proposal,

[12] In asserting that TAPS acknowledged that its proposal "meets the requirements of EPAct and Section 217 with respect to the appropriate LSE preference without limiting the priority to LSEs with long-term supply contracts," PJM (Answer at 5 n.9) mischaracterizes TAPS reference. After arguing strongly for a preference limited to LSEs with long-term power supply arrangements as Section 217(b)(4) requires, TAPS (Rehearing at 10 & n.13) used PJM's proposal to illustrate an alternative that "strays further from the

and the fact that there may be insufficient ARRs today to hedge LSEs with long-term power supply arrangements.

PJM argues (Answer at 5) that, under its LTTR proposal, its priority for all LSEs

> recognizes that the transmission system was designed and built to serve native load in the PJM region from a defined set of historic resources, and that customers eligible for the priority paid for, and continue to pay for, the development of that infrastructure.

That is news to Chambersburg, Pennsylvania, and Front Royal, Virginia, two APPA member LSEs, that have paid for and relied upon the Allegheny Power transmission system for decades, and that, until this year, received 100 percent of their ARR nominations. In March, 2006, PJM cut their ARRs for the 2006-2007 PJM Planning Year by almost 50 percent,[13] exposing them to what is estimated to be more than $9 million in additional congestion costs this year. This has occurred not because they changed their power supply resources, ARR nominations, or loads, or even because of load growth originating in the Allegheny Zone – there has been little. Those LSEs have been effectively divested of ARRs and exposed to congestion because they are located adjacent to the highly congested Bedington-Black Oak Line and because of unscheduled flows on the PJM system, load growth elsewhere in PJM, and increased ARR nominations that flow over that line – factors not caused by, and outside the control of, Chambersburg and Front Royal. PJM has interpreted its Open Access Transmission

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statutory language and will pose some additional administrative challenges," but avoids some of the gaming opportunities and planning distortions created by the final rule's de-linking of long-term rights from power supply.

[13] Chambersburg and Front Royal filed a complaint against PJM's 2006-2007 planning Year ARR allocation in *Borough of Chambersburg, Pennsylvania and Town of Front Royal, Virginia v. PJM Interconnection, L.L.C.*, Docket No. EL06-94-000, on August 1, 2006, and protests against PJM's initial and amended LTTR filings in Docket No. ER06-1218-000 and -001 on August 7, 2006, and September 11, 2006, respectively. APPA has also filed a timely motion to intervene in Docket No. EL06-94-000.

Tariff to permit it to disproportionately and severely cut the ARRs allocated to Chambersburg and Front Royal. It will apparently continue to do so for as long as the Bedington-Black Oak Line is constrained and not all requested ARRs are simultaneously feasible.[14]

The PJM LTTR proposal incorporates and builds upon its current annual ARR allocation rule. PJM's LTTR proposal contains the same requirement that all ARRs must be simultaneously feasible and will apply the same proration requirement in the event they are not. Under the PJM proposal, if not all ARRs requested in "Stage 1A"[15] are simultaneously feasible, the ARRs will be prorated. The more entities eligible to nominate ARRs in Stage 1A, the greater the likelihood that ARRs will need to be prorated. Thus, PJM is wrong when it asserts (Answer at 6) that the priority it would accord in Stage 1A for LSEs with long-term contracts "is not compromised by the fact that LSEs with shorter-term supply arrangements are also eligible to receive the priority allocation."[16]

PJM is offering ARRs in its annual allocation and a projection that those ARRs will be simultaneously feasible in each of the next ten years – this is PJM's ten-year product. But those future ARRs remain subject to the annual simultaneous feasibility test and, if they are not simultaneously feasible, they must be prorated.[17] As any number of

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[14] Realistically, it seems highly likely that the Bedington-Black Oak line will continue to experience serious congestion until major planned 500 kV and 765 kV transmission additions are made the PJM grid.

[15] Stage 1A requests are limited to an LSE's prorata share of the Zonal Base Load (*ie.,* "the *lowest daily peak load* for the calendar year immediately preceding the calendar year in which an ARR allocation was conducted).

[16] Theoretically, ARRs should be available in Stage 1B, but Stage 1B allocates only those ARRs "not allocated in stage 1A." *See* Section 7.4.2(c), Fourth Revised Sheet No. 408A. On a heavily constrained facility (such as the Bedington-Black Oak line), ARRs are unlikely to be available in Stage 1B.

[17] *See* Proposed Third Revised Sheet No. 410.

changes to the PJM system could affect the results of the simultaneous feasibility analysis each year that it is run, a LSE has no real way to know, on more than an annual basis, what amount of FTRs/ARRs it will actually receive in "out" years. This degree of uncertainty could well drive LSEs to opt for shorter-term power supply resources over perhaps more stable and cost-effective long-term resources. This is precisely what Congress sought to avoid in passing Section 217 of the Federal Power Act.

PJM's other "policy" arguments (*e.g.*, the flexibility and efficiency of short-term power supplies; its accommodation of retail access suppliers) are merely arguments against the policy choice Congress has made, as shown in APPA's and TAPS' respective rehearing applications but ignored by PJM (Answer at 6-8). PJM's gaming argument (*id.*) treats LTTRs as a fungible speculative vehicle, and overlooks the fact that a long-term right tied to an LSE's long-term power supply arrangements functions as a hedge against the congestion costs it will incur to serve its load. Significantly, PJM's Answer makes no attempt to respond to TAPS' and APPA's demonstration[18] that delinking long term right preferences from power supply creates serious gaming opportunities (*e.g.*, allowing LSEs outside a load pocket to compete with LSEs in the load pocket for LTTRs into the load pocket). Such a result would frustrate Section 217(b)(4)'s clear directive to enable LSEs to secure long-term rights to support long-term power supply arrangements to meet their service obligations, not for speculative purposes. In short, PJM provides no credible basis for this Commission to reject the policy choice Congress made in enacting Section 217(b)(4), even if the Commission had the authority legally to do so.

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[18] *See* TAPS Rehearing at 5-6; APPA Rehearing at 15-16.

B. PJM's Argument Against Removal of Guideline 5's Limitation to LSEs Within an RTO's Footprint Demonstrates the Limitation's Flaws

PJM (Answer at 9-11) argues against the rehearing requests filed by TAPS and others (including, although not mentioned, APPA[19]) that seek removal of Guideline 5's limitation of any preference to LSEs within an RTO's footprint. Those arguments serve only to highlight the need for removal of that restriction.

PJM's statutory argument (Answer at 9-10 & n.19) is premised on Section 217's title — "Native Load Service Obligation" — and the assertion that the adjective "native" must mean load within a particular RTO's footprint because otherwise it would be superfluous. PJM's resort to creative interpretation of the provision's *title* ignores Section 217(a)'s detailed definitions of the particular entities entitled to the provision's protection. Conspicuously absent from Section 217(a)'s definitions of "load-serving entity," "distribution utility," "State utility," and "service obligation" is any limitation to load-serving entities within a particular region. The final rule's definitions adopt such a limitation. *See* Order No. 681, regulations to be codified at 18 C.F.R § 42.1(b). And no such distinction made in Section 217(b)(4)'s directive to enable LSEs to secure long term rights for long term power supply arrangements.

PJM's reliance (Answer at 10) on its Order No. 2000 planning obligation to support limiting LTTRs in a manner that exaggerates RTO seams is utterly misplaced. An RTO's Order No. 2000 planning obligation is not confined to planning for LSEs in its footprint, but by its obligation to "provide efficient, reliable and non-discriminatory transmission service." 18 C.F.R. § 35.34(k)(7) (2006). Given Order No. 2000's

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[19] *See* APPA Rehearing at 17-19.

emphasis on coordination across RTO seams, as amplified by experience and Commission approval of RTOs with unseemly seams, PJM's argument amounts to a tacit admission that it is not doing its job if it is planning only for LSEs in its footprint. This failure is particularly problematic where, as described by TAPS (Rehearing Request at 12), TDUs are faced with RTO borders (not of their making) that split their loads and resources among multiple RTOs. Indeed, PJM's argument flies in the face of Commission efforts now underway to foster and develop cost allocations for new transmission projects benefiting customers across the PJM/MISO boundary.[20]

PJM should be embarrassed by its argument against TAPS' demonstration (Rehearing Request at 12) that a footprint limitation is inconsistent with Commission orders eliminating pancaked rates between MISO and PJM and requiring a joint and common market.[21] While noting that MISO and PJM "are considering the issue of transmission rights in their joint and common market efforts" (Answer at 11 n.21), PJM apparently seeks discretion to treat as second-class citizens LSEs with cross-RTO power supply arrangements and/or loads, as its description of its LTTR proposal shows. *See* PJM Answer at 10 (explaining that its LTTR proposal would limit LSEs outside PJM to incremental ARRs resulting from participant-funded upgrades). Indeed, the footprint limitation defended by PJM, if not corrected as requested by APPA and TAPS, may be argued to bar MISO and PJM from comparable treatment of all LSEs with long-term power supply arrangements in their combined footprint, despite provision for a single

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[20] *See* September 21, 2006 Order Establishing Technical Conference, *Midwest Independent Transmission System Operator, Inc., et al.*, 116 F.E.R.C. ¶ 61,260 (2006).

[21] *See, e.g., MISO*, 105 F.E.R.C. ¶ 61,212, P 14, 45 (2003) (eliminating pancaked rates for transactions sinking in the combined PJM-MISO region (P 14) and noting such benefits as the regionwide downward pressure on the price of generation because remote generation is made economic for import (P 45)).

non-pancaked rate. *See* Order No. 681 at P 328 (interpreting revised Guideline 5 to limit the preference to LSEs with an obligation to pay the embedded cost of the particular RTO's system).

PJM used to discriminate against MISO loads, according only second-priority congestion revenue rights to their long-term-firm point-to-point transmission service on paths out of PJM, such as the path out of the Commonwealth Edison zone into the Wisconsin portion of MISO. PJM and its transmission owners sought to defend that discrimination on multiple grounds, including the fact that the path out of PJM into MISO was slated to be de-pancaked. Nonetheless, the Commission "found that PJM's allocation rules were unjust and unreasonable because they did not give point-to-point customers access to ARRs/FTRs comparable to that of network customers," primarily harming "customers serving load in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO)" (footnote omitted). *PJM Interconnection, L.L.C.*, 111 F.E.R.C. ¶ 61,187, P 3 (2005) (summarizing *PJM Interconnection, L.L.C.*, 107 F.E.R.C. ¶ 61,223 at P 46-47, 51 (May 28 Order), *order on reh'g,* 108 F.E.R.C. ¶ 61,269 (2004)). Thus, PJM has already lost this argument and should not be allowed to end run this precedent by rulemaking.

In short, Section 217(b)(4)'s directive does not and should not disappear at the RTO border. PJM's arguments to the contrary should therefore be rejected.

CONCLUSION

For the reasons stated above, the Commission should: (1) deny PJM's motion for leave to answer; or, in the alternative, (2) reject the arguments in PJM's Answer as unsupported and without merit.

Respectfully submitted,

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