UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Governance and Stakeholder Reforms	))	**Docket No. AD26-7-000**

POST-CONFERENCE COMMENTS OF
THE ELECTRIC POWER SUPPLY ASSOCIATION

In accordance with the July 30, 2026 notice issued by the Federal Energy Regulatory Commission ("FERC" or the "Commission"),[1] the Electric Power Supply Association ("EPSA")[2] submits these post-conference comments following up on the Chairman- and Commissioner-led technical conference held on July 23, 2026 (the "Technical Conference"), to discuss the governance and stakeholder processes of PJM Interconnection, L.L.C. ("PJM"). EPSA appreciates the Commission's efforts to address these matters and this opportunity for input on the important issues discussed at the Technical Conference. EPSA is submitting these comments to address two questions posed by the Commission about the allocation of filing rights under Section 205 of the Federal Power Act (the "FPA"),[3] and to underscore the critical importance of ensuring that any attempted reallocation of such rights is fully in accordance with the statutory framework of the FPA. EPSA also supports and incorporates by reference the

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1 *PJM Governance & Stakeholder Reforms*, Docket No. AD26-7-000 (July 30, 2026) (unreported) (the "July 30 Notice").

2 EPSA is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. This filing represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

3 16 U.S.C. § 824d (2024).

responses to the specific questions set forth in the July 30 Notice that are being filed by The PJM Power Providers Group.

EPSA is particularly concerned by suggestions that Section 205 filing rights could be transferred or delegated to states or a state entity like the Organization of PJM States Inc ("OPSI"), which are not public utilities. EPSA is also concerned about suggestions that the Commission ought to upset the bargain struck when PJM was formed, under which consent from its members, including power suppliers, was required under PJM's Amended and Restated Operating Agreement (the "Operating Agreement") for Section 205 filings with respect to certain matters. Specifically, while PJM may be dissatisfied with the need for member approval for Section 205 filings with respect to rules for the energy and ancillary services markets,[4] there is no basis for the Commission to disrupt the agreement that was the basis for PJM's formation or to otherwise give PJM the ability to usurp the filing rights of the suppliers that have real "skin in the game" and who will be relied on to make needed investments in the coming years.

I. COMMENTS

A. The FPA Bars OPSI and Other State Entities From Having Section 205 Filing Rights

Section 205 reserves to public utilities the right to file rate changes and is therefore "intended for the benefit of the utility,"[5] with the Commission only "play[ing] 'an

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[4] *See* Comments from PJM Interconnection, L.L.C. at 6, Docket No. AD26-7-000 (filed July 16, 2026) (the "PJM Pre-Technical Conference Comments"). While the July 30 Notice also questions whether PJM should have Section 205 rights with respect to Regional Transmission Expansion Planning ("RTEP"), these comments focus on PJM's filing rights with respect to the energy and ancillary services markets.

[5] *City of Winnfield v. FERC*, 744 F.2d 871, 875 (D.C. Cir. 1984).

essentially passive and reactive' role under section 205."[6] As explained in the affidavit of the Honorable Joseph T. Kelliher, former Chairman and Commissioner of the Commission, provided in Attachment A (the "Kelliher Affidavit"), state entities like OPSI cannot make filings under Section 205, given that such entities are simply not "public utilities" under the statute.[7] In fact, the Commission previously acknowledged as much when it found that "[t]he FPA grants Section 205 filing rights to public utilities only, and the Regional State Committee will not be a public utility."[8] Moreover, it is well established that neither the Commission nor a state authority can force a public utility to "cede [its] right under section 205 of the Act to file changes in rate design with the Commission,"[9] or compel the public utility to make a rate filing that it does not want.[10]

It bears emphasis that, while *Atlantic City* recognized a public utility's right to

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6 *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002) ("*Atlantic City*") (citation omitted)).

7 *See* Kelliher Affidavit at PP 11-12; 16 U.S.C. § 824(e) (2024) (defining a "public utility" as "any person who owns or operates facilities subject to the jurisdiction of the Commission").

8 *ISO New England Inc.*, 106 FERC ¶ 61,280 at P 79, *on reh'g*, 109 FERC ¶ 61,147 (2004), *petitions for review denied*, *Me. Pub. Utils. Comm'n v. FERC*, 454 F.3d 278 (D.C. Cir. 2006). *See also Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283 at P 64 (2008) ("Section 205 grants filing rights to jurisdictional public utilities, not state agencies or commissions.").

9 *Atlantic City*, 295 F.3d at 11. *See also Atlantic City Elec. Co. v. FERC*, 329 F.3d 856, 858 (D.C. Cir. 2003) ("*Atlantic City II*") (same). *Cf. Building for the Future Through Elec. Reg'l Transmission Planning and Cost Allocation*, Order No. 1920-B, 191 FERC ¶ 61,026 at P 52 (recognizing that public utilities have filing rights under Section 205 of the FPA, but explaining such Section 205 rights were not implicated because the Commission was acting under Section 206 in requiring transmission providers to make compliance filings providing state entities' proposals for cost allocation "to assist in building the record for the Commission's exercise of its own authority to determine and fix the just and reasonable rate").

10 *See Massachusetts Dep't of Pub. Utils. v. FERC*, 729 F.2d 886, 888 (1st Cir. 1984) ("*Mass DPU*") (permitting a state to require a public utility to make a filing under Section 205 would "allow a state to do what FERC itself cannot, namely, to change an *interstate* rate practice that FERC has not found unreasonable" (emphasis in original)). *See also* Kelliher Affidavit at PP 13-17 (discussing *Mass DPU*).

"choose to voluntarily give up, by contract, some of their rate-filing *freedom* under section 205,"[11] this falls far short of blessing an attempt to grant or transfer Section 205 rights to non-public utilities in contravention of the plain language of the statute.[12] The practical application of such shared rights demonstrates the potential legal pitfalls. First, imagine a situation where OPSI is permitted to make Section 205 filings even where PJM is not seeking a change in its rates. As Mr. Kelliher explains, this would effectively give OPSI the right to force changes to rates that are not unjust or unreasonable, which the Commission itself is prohibited from doing.[13] Alternatively, imagine a situation where PJM files its desired Section 205 proposal but then a competing OPSI proposal is also filed under Section 205. In such a case, PJM's and OPSI's proposals would theoretically be placed on an even footing before the Commission, and the Commission could select the proposal of the non-public utility, OPSI, over that of the public utility, PJM, even if the public utility's proposal were just and reasonable, contrary to the well-established principle that the Commission may reject rate changes proposed under Section 205 of the FPA "only if it finds that the changes . . . are not 'just and reasonable.'"[14] This would directly violate PJM's rights under Section 205 of the FPA: as the court recognized in *Mass DPU*, "[t]o accept Massachusetts' claim that [Section] 205 includes 'regulator-compelled' utility-proposed changes would prevent the utility from choosing among reasonable rate-practice alternatives."[15]

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11 *Atlantic City*, 295 F.3d at 10 (emphasis added).

12 *See* Kelliher Affidavit at PP 20-23.

13 *See id.* at PP 13-14 (discussing holding in *Mass DPU*).

14 *Atlantic City*, 295 F.3d at 9.

15 *Mass DPU*, 729 F.2d at 888.

Finally, Mr. Kelliher points out that, even without Section 205 filing rights, state entities have options available to them to address rates they believe are unjust and unreasonable. Indeed, consistent with the statutory scheme of the FPA, states have historically filed, and continue to file, complaints with the Commission under Section 206 of the FPA,[16] but "what OPSI is asking for is functionally the ability to obtain relief that is only available under Section 206 while shedding the burden associated with Section 206 that all other complainants – and the Commission itself – are required to bear."[17]

B. The Bargain Struck in the Operating Agreement Should be Upheld

On December 31, 1996, nine of the ten members of the Pennsylvania-New Jersey-Maryland Interconnection made a filing with the Commission to comply with Order No. 888, explaining that their filing "was the product of intense dialogue and collaboration," but that "[i]t was not possible for the participants to agree on a comprehensive restructuring of PJM, including an [independent system operator ("ISO")]," by the date of the filing and committing to make a further filing.[18] On June 2, 1997, the Supporting Companies fulfilled that commitment by making another filing to establish PJM as an ISO, which resulted from "further negotiations with stakeholders," where the "Supporting Companies worked with a large group of interested stakeholders

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16 *See* Kelliher Affidavit at P 19.

17 *Id.*

18 Brief of the Supporting Companies at 2, Docket Nos. ER97-1082-000, *et al.* (filed Dec. 31, 1996) (filed by Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively, the "Supporting Companies")).

in an effort to obtain as much consensus as possible."[19] Among other things, this filing included the Operating Agreement setting forth "revised governance provisions [that] are a direct result of discussions among the Supporting Companies and other stakeholders."[20] One of the "[k]ey features" of the Operating Agreement[21] was the "[c]lear delineation of the respective roles of the PJM Board, the Office of the Interconnection, and the Members Committee," where the Members Committee's responsibilities included "amend[ing] or terminat[ing] the Operating Agreement. . . ."[22]

In conditionally accepting the Operating Agreement, the Commission did not require any changes to the filing rights limitations set forth therein.[23] There is no basis for the Commission or PJM to now seek to undo this foundational structure that informed members' willingness to establish and join PJM. Even aside from the fact that the Operating Agreement is a voluntary agreement among sophisticated parties that should be entitled to protection under the *Mobile-Sierra* public interest standard of review,[24] disrupting that agreement by giving PJM unilateral Section 205 filing rights would effectively recreate the situation that led to *Atlantic City* and *Atlantic City II*. That is, the public utilities that actually own the assets used to supply the energy and

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[19] Amended & Restated Operating Agreement, Transmittal Letter at 1, Docket No. ER97-3189-000, *et al.* (filed June 2, 1997).

[20] *Id.* at 3.

[21] *Id.* at 7.

[22] *Id.* at 9.

[23] *See Pennsylvania-N.J.-Md. Interconnection*, 81 FERC ¶ 61,257 (1997) (the "PJM ISO Order"), *clarified*, 82 FERC ¶ 61,068 (1998), *on reh'g*, 92 FERC ¶ 61, 282 (2000). The PJM ISO Order did require modifications to the filing rights proposed in the Transmission Owners Agreement, *see* 81 FERC ¶ 61,257 at 62,279, leading to the decisions in *Atlantic City* and *Atlantic City II*.

[24] *See United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.,* 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.,* 350 U.S. 348 (1956).

ancillary services markets would be completely deprived of their rights under Section 205. This result is clearly forbidden: As the D.C. Circuit made abundantly clear in *Atlantic City* and reiterated in *Atlantic City II*, "[w]hen FERC attempts to deprive the utilities of their rights 'to initiate rate design changes with respect to services provided by their own assets[,]' FERC has exceeded its jurisdiction."[25] Moreover, the Commission itself has previously recognized that, "[u]nder section 205 of the FPA, a single utility or a group of utilities is not permitted to file to change a rate applicable to another utility, unless there is an agreement to that effect,"[26] but that is precisely what would happen if the Commission were to disregard the balance struck in the Operating Agreement and grant PJM unilateral Section 205 filing rights over suppliers' objections.

In short, the statutory scheme of the FPA makes clear that the Commission cannot use its authority under Section 206 of the FPA to effectively strip public utilities of their Section 205 filing rights over energy and ancillary services markets and transfer such rights to PJM by, for example, finding that the inclusion of energy and ancillary services market rules in Schedule Nos. 1 and 2 to the Operating Agreement is unjust and unreasonable, and requiring those rules to be moved to the PJM Open Access Transmission Tariff (the "PJM Tariff"), where PJM has unilateral Section 205 filing rights.

Even assuming *arguendo*, however, that the Commission had the authority to take such an action under Section 206, there are sound policy reasons to refrain from doing so. In particular, EPSA notes that PJM previously filed a complaint seeking to

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25 *Atlantic City II*, 329 F.3d at 859 (alteration in original) (quoting *Atlantic City*, 295 F.3d at 10).

26 *PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,012 at P 22 (2004), *on reh'g*, 110 FERC ¶ 61,234 (2005).

move the RTEP procedures out of the Operating Agreement to the PJM Tariff so that PJM would have Section 205 filing rights with respect to the RTEP. The Commission initially denied the complaint and then, on rehearing, dismissed it on procedural grounds.[27] It is nonetheless instructive that, in *Duquesne I*, the Commission reminded PJM that neither the rules of other regional transmission organizations ("RTOs") or ISOs[28] nor any purported increased efficiencies[29] would satisfy PJM's burden under Section 206 of the FPA to make such a change to the Operating Agreement. Notwithstanding the Commission's subsequent dismissal in *Duquesne II*, those findings correctly state the legal standard applicable under Section 206 of the FPA and would apply to any attempt to modify the Operating Agreement to give PJM Section 205 filing rights over the energy and ancillary services markets. In addition, as a policy matter, depriving PJM members of their Section 205 rights with respect to those markets would signal a disregard for supplier concerns, sending precisely the wrong message at this critical juncture when the investment community is looking for signs that PJM will provide the necessary stability and consistency for investments and that the value of

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27 *Duquesne Light Co.*, 189 FERC ¶ 61,181 at P 105 (2024) ("*Duquesne I*"), *on reh'g*, 192 FERC ¶ 61,051 (2025) ("*Duquesne II*").

28 *See Duquesne I*, 189 FERC ¶ 61,181 at P 108 (explaining that there are "regional differences in RTOs' governance structure," and that such differences "were arrived at through negotiations and tradeoffs that balance the rights and obligations of diverse stakeholders" (footnotes omitted)). *See also Regional Transmission Orgs.*, Order No. 2000, 89 FERC ¶ 61,285, 1999 WL 33505505 at *94 (1999) (recognizing that "RTOs will take many different forms that reflect the needs and different starting points of each region," and that "[i]t is unlikely that a single approach to governance will work for the different types of RTOs that are likely to emerge"), *on reh'g*, Order No. 2000-A, 90 FERC ¶ 61,201 (2000).

29 *See Duquesne I*, 189 FERC ¶ 61,181 at P 105 (stating that "the extent to which PJM may be able to more efficiently or effectively propose changes to . . . rules under some alternative structure governing the circumstances under which PJM can make FPA section 205 filings" does not establish that the existing limitations on PJM's filing rights as set forth in the Operating Agreement are unjust, unreasonable or unduly discriminatory").

any investments will not be eroded by future rule changes.

II. CONCLUSION

WHEREFORE, for the foregoing reasons, EPSA respectfully requests that the Commission take these comments under consideration in taking any further action with respect to PJM's governance and stakeholder processes.

Respectfully submitted,

ELECTRIC POWER SUPPLY ASSOCIATION

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Dated: August 21, 2026

ATTACHMENT A

THE KELLIHER AFFIDAVIT

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
PJM Governance and Stakeholder Reforms	)	**Docket No. AD26-7**
	)	

Affidavit

Of

The Hon. Joseph T. Kelliher

On Behalf of

The Electric Power Supply Association

August 21, 2026

Introduction

1. My name is Joseph T. Kelliher. I am the principal of Joseph Kelliher Consulting, an advisory and consulting business.
2. My Affidavit supports the Post-Conference Comments of the Electric Power Supply Association in the PJM Interconnection, L.L.C. ("PJM") Governance and Stakeholder Reforms proceeding initiated by the Federal Energy Regulatory Commission ("Commission" or "FERC") earlier this year. In this Affidavit I review Sections 205 and 206 of the Federal Power Act, previous Commission approvals and rejections of state requests for Section 205 filing rights, relevant legal precedent, and discuss whether the Commission has the legal authority to grant requests by the Organization of PJM States, Inc. ("OPSI") and states for Section 205 filing rights. My conclusion is the Commission is barred from granting states direct or indirect Section 205 filing rights by the Federal Power Act.

Background and Qualifications

3. My opinions are based on my forty years of experience with energy policy matters, on both the giving and receiving end of energy policymaking. That experience includes service as Commission Chairman and Commissioner (2003-09); Executive Vice President-Federal Regulatory Affairs with NextEra Energy, Inc. (2009-20), the largest U.S. electricity company, which through its subsidiaries is a member of every regional transmission organization ("RTO"), either as a generator, marketer, or transmission owner; Senior Policy Advisor to the U.S. Secretary of Energy (2001-03) during the California and Western Power Crisis and development of the National Energy Strategy; and Majority Counsel for the House Commerce Committee (1995-2000), responsible for electricity legislation and Commission oversight. During my service as FERC Chairman and Commissioner, I voted to authorize the

establishment of multiple RTOs, including Southwest Power Pool, Inc. ("SPP"), and ISO-New England Inc. ("ISO-NE"). The Commission issued Order No. 719 during my chairmanship, which was designed to improve RTO responsiveness to state commissions and stakeholders.[1] I also voted on a number of orders where the Commission considered state requests for direct or indirect Section 205 filing rights, voting to grant the SPP regional state committee indirect Section 205 filing rights in 2004[2] and voting to reject the Organization of MISO States' ("OMS") request for direct Section 205 filing rights in 2008.[3] I voted more than 7,000 times during my FERC service, and my vote to grant indirect Section 205 filing rights to the SPP regional state committee is one I came to regret. As Commission Chairman, I proposed joint boards with the states to consider policy questions that involved both federal and state jurisdiction, which evolved into federal-state collaboratives that continue today.

4. I reserve the right to modify or supplement this Affidavit.

State Efforts to Secure Federal Power Act Section 205 Filing Rights with Respect to PJM's Rules

5. OPSI and some PJM states have requested that the Commission grant OPSI and PJM states Section 205 filing rights.[4] The OPSI comments are the most fulsome, while the other state commenters offer only a sentence or two in passing.[5] OPSI makes much of that fact that it is

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[1] *Wholesale Competition in Regions with Organized Elec. Mkts.*, 125 FERC ¶ 61,071 (2008) ("Order No. 719"), *order on reh'g*, 128 FERC ¶ 61,059 ("Order No. 719-A"), *order on reh'g*, 129 FERC ¶ 61,252 (2009) ("Order No. 719-B").
[2] *Southwest Power Pool, Inc*., 106 FERC ¶ 61,110 ("*SPP I*") (Wood, Chairman, concurring) (Kelliher, Comm'r, concurring), *order on reh'g*, 109 FERC ¶ 61,010 (2004) ("*SPP II*").
[3] *Midwest Indep. Transmission Sys. Operator, Inc*., 122 FERC ¶ 61,283 at P 64 (2008) (denying OMS request for direct Section 205 filing rights on the grounds that "Section 205 grants filing rights to jurisdictional public utilities, not state agencies or commissions").
[4] *PJM Governance and Stakeholder Reforms*, Pre-Conference Comments of the Organization of PJM States, Inc., Docket No. AD26-7-000 (filed July 21, 2026) ("OPSI Comments"); *PJM Governance and Stakeholder Reforms*, Pre-Technical Conference Comments of the Pennsylvania Public Utility Commission, Docket No. AD26-7-000 (filed July 22, 2026) ("Pennsylvania PUC Comments"); *PJM Governance and Stakeholder Reforms*, Comments of the Public Utilities Commission of Ohio's Office of the Federal Energy Advocate, Docket No. AD26-7-000 (filed July 21, 2026) ("Ohio FEA Comments").
[5] Pennsylvania PUC Comments at 1; Ohio FEA Comments at 5.

not asking that PJM and PJM public utility transmission owners be divested of their Section 205 filing rights,[6] something that is not in the world of the possible in any event after *Atlantic City Electric Co. v. FERC* ("*Atlantic City*").[7] Instead, OPSI "simply" requests that PJM and all PJM public utility transmission owners voluntarily bind themselves to make Section 205 filings at the behest of OPSI and state commissions.[8] This would be true even when the public utility opposes the filing and believes it to be unjust and unreasonable, or has no desire to change the existing tariff. This is no small thing. To be clear, the Commission has not previously granted Section 205 filing rights over public utility transmission owners in SPP, ISO-NE, and Midcontinent Independent System Operator, Inc. f/k/a Midwest Independent Transmission System Operator, Inc. ("MISO") to individual state commissions,[9] and the direct and indirect extension of Section 205 filing rights to state commissions, as a group, is legally problematic.

6. States have requested two types of Section 205 filing rights in the past: direct and indirect. Direct filing rights would allow states to make Section 205 filings to change the tariff rates, terms and conditions of state-regulated public utilities on their own motion. Indirect filing rights are where an RTO or public utility is required by the Commission to make Section 205 filings at the behest of a regional state committee or state. While some voices in PJM seem to be calling for states to be vested with direct Section 205 filing rights, as discussed below, that is barred by the Federal Power Act, which the Commission to its credit has

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[6] OPSI Comments at 12-13 ("OPSI is not asking that [PJM and PJM public utilities] give up *any* of their filing authority under FPA Section 205.") (emphasis in original) (footnote omitted).
[7] 295 F.3d 1 (D.C. Cir. 2002).
[8] OPSI Comments at 9-17.
[9] The Commission did approve Entergy's proposal for an Entergy regional state committee to have indirect Section 205 filing rights but did not share Entergy's filing rights with individual state commissions. *Entergy Ark., Inc.*, 133 FERC ¶ 61,211 at P 15 (2010) ("*Entergy*").

acknowledged in the past.[10] To the extent that OPSI or others are nonetheless asserting that "states should have filing rights," this is actually a muted call for the Commission to ignore or Congress to amend the Federal Power Act.

7. The OPSI proposal requests indirect Section 205 filing rights, where PJM and PJM public utility transmission owners would be compelled to make Section 205 filings on OPSI's behalf. This would effectively turn PJM and PJM public utility transmission owners into a sleeve for the state exercise of Section 205 filing rights, whereby PJM and the PJM public utility transmission owners would be forced to lend their Section 205 filing rights to the states. As discussed below, giving states such indirect Section 205 filing rights is also barred by the Federal Power Act. While OPSI focuses on resource adequacy and transmission cost allocation reforms,[11] the limitations of the Federal Power Act apply with equal force to all rates filed under Section 205. Moreover, some advocates for state filing rights assert that all the states are asking for is the ability to make a joint filing with PJM when the states and PJM are in agreement, but if that were truly the case, there is no reason to do anything, since that is functionally equivalent to states filing supporting comments on a PJM Section 205 filing. However, it would be naïve to discount the possibility that PJM or individual public utilities could feel pressured to agree to make such "voluntary" joint filings because of threats by states to withdraw from PJM or by the prospect of retaliation by state commissions. Personally, I do not see much difference between a Section 205 filing that a

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[10] *ISO New Eng. Inc.*, 106 FERC ¶ 61,280 at P 79 ("*ISO-NE I*") (denying the New England Conference of Public Utility Commissioners' ("NECPUC") request for concurrent Section 205 filing rights because "[t]he FPA grants Section 205 filing rights to public utilities only, and the Regional State Committee will not be a public utility."), *on reh'g*, 109 FERC ¶ 61,147 (2004) ("*ISO-NE II*"), *petitions for review denied*, *Me. Pub. Utils. Comm'n v. FERC*, 454 F.3d 278 (D.C. Cir. 2006) ("*Maine PUC*"); *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283 at P 64 (2008) (denying OMS request for direct Section 205 filing rights on the grounds that "Section 205 grants filing rights to jurisdictional public utilities, not state agencies or commissions").

[11] OPSI Comments at 1.

state has compelled a public utility to file on its behalf and one the state has filed directly. Both are Section 205 filings made by a non-public utility and both are barred by the Federal Power Act.

8. To be clear, I do not question the motives of state commissions that are seeking Section 205 filing rights. OPSI expresses frustration that retail regulators are unable to control wholesale costs that flow through to retail consumers.[12] But its grievance properly lies with the Commerce Clause, the Supremacy Clause, and Supreme Court decisions tracing back 100 years, including judicial doctrines such as the filed rate doctrine, not the PJM Tariff or Operating Agreement.

9. OPSI also goes so far as to suggest that PJM and/or PJM transmission owners would be required to share their filing rights with *all* state commissions.[13] Even aside from legal considerations, this raises practical concerns because it assumes away the prospect that PJM states might disagree. Would PJM only be compelled to make an alternative filing at the behest of the states if there is unanimous support among the states?[14] If not, is a supermajority required or does a simple majority suffice? Are indirect Section 205 filing rights reserved to the majority of PJM states and would the minority be divested of those rights? Would PJM have to make two or more alternative filings on behalf of the states if PJM states fracture into different camps? In the event of broad disagreement among the states, would the disagreeing states all be able to make individual Section 205 filings on behalf of PJM that are contradictory in nature, along perhaps with a filing from PJM itself?

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[12] OPSI Comments at 9.
[13] *Id.* at 13 ("OPSI is simply requesting that [PJM and PJM public utility transmission owners] add a condition to these [Section 205 filing] rights, voluntarily, to make a filing on behalf of the states").
[14] The Entergy regional state committee only had the authority to compel Entergy to make a Section 205 filing upon unanimous consent of its members. *Entergy*, 133 FERC ¶ 61,211 at P 5.

If multiple alternative proposals are just and reasonable, how would the Commission choose among them? Would a "tie" go to the public utility or a non-public utility? Frankly, it is hard to see that any of these outcomes are consistent with the purpose of the PJM Governance and Stakeholder Reform proceeding: improving PJM decisionmaking and its ability to address operational and market needs in a timely and efficient manner.

10. Some advocates for granting states Section 205 filing rights envision that the states and PJM will always agree with the proposed filing, so where is the harm? But in that scenario, what is the point? As I noted previously, if PJM and the states agree on a Section 205 filing, PJM can make the filing and the states can file supportive comments, as they can do today. When considering granting Section 205 filing rights to state commissions or a committee of state commissions, the Commission should assume the *opposite*, namely that the public utility, whether it be PJM or an individual PJM public utility, opposes the state proposal and believes it is unjust and unreasonable. Should a public utility be compelled to make a Section 205 filing at the behest of the states that it believes is unjust and unreasonable?

Federal Power Act Sections 205 and 206

Section 205

11. The rationale offered by OPSI for sharing the Section 205 filing rights of PJM and PJM public utility transmission owners with the states is that "PJM's governance structure and stakeholder process were developed for a different era."[15] It may be a different era, but it is still the same Federal Power Act. There are two ways tariff rates, terms and conditions can be changed under the Federal Power Act. The first approach, the path the states would like to avail themselves of, is Section 205 of the Federal Power Act, which states that:

[15] OPSI Comments at 1.

> every *public utility* shall file with the Commission ... schedules showing all rates and ... practices ... and ... contracts which ... relate to such rates .... [N]o change shall be made ... except after sixty days' notice .... Such notice shall be given by filing with the Commission ... new schedules .... Whenever any such new schedule is filed the Commission shall have authority ... to enter upon a hearing concerning the lawfulness [of the changes] ...; and, pending such hearing and the decision thereon, the Commission ... may suspend the ... [new] schedule ... [for no longer than] five months .... If ... an order [has not been] made at [the end of] ... five months, [the changes] ... shall go into effect ..., but in case of a proposed increased rate or charge, the Commission ... [may require a refund of any] portion of such increased rate[ ] ... as by its decision shall be found not justified. At any hearing involving [a rate increase], the burden [of proving an increase] just and reasonable shall be upon the *public utility* ....

16 U.S.C. §§ 824d(c)-(e).

12. What stands out is that Section 205 filing rights are reserved to "public utilities," a term defined to mean "any person who owns or operates facilities subject to the jurisdiction of the Commission,"[16] which in turn is "the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce."[17] A "public utility" must be a "person" and "person" is defined by the Federal Power Act to mean an individual or corporation.[18] To belabor the obvious, OPSI and state commissions do not own or operate facilities subject to FERC jurisdiction, nor are OPSI and state commissions "individuals" or "corporations." That would seem to answer the question of whether a regional state committee or state commissions can be directly vested with Section 205 filing rights: it is barred by the Federal Power Act, which reserves these rights to public utilities, and only public utilities. The Commission has consistently acknowledged that in the past.[19] If the definition of "public utility" left any room for doubt (and it does not), that would be

[16] Federal Power Act § 201(e), 16 U.S.C. § 824(e).
[17] *Id*., § 201(a), 16 U.S.C. § 824(a).
[18] *Id*., § 3(4), 16 U.S.C. § 796(4).
[19] *See supra* note 11.

eliminated by Section 201(f), which expressly excludes from the application of Part II of the Federal Power Act any "State or any political subdivision of a State…."[20]

13. The courts have also held that states cannot exercise indirect Section 205 filing rights. This question was asked and answered more than forty years ago in *Massachusetts Department of Public Utilities v. FERC* ("*Mass. DPU*").[21] In *Mass. DPU* a state commission ordered the Western Massachusetts Electric Company, a public utility under the FPA, to make a Section 205 filing to change a rate-setting practice objectionable to the state commission. The public utility dutifully made the filing, but FERC rejected it, finding that Section 205 "governs changes that the utility itself proposes, not those that a state regulator requires it to propose."[22] As future Supreme Court Justice Breyer summarized the FERC rejection: "If Massachusetts objects to the rule, says FERC, it should file a complaint in accordance with [Section 206]."[23] The court agreed with FERC. Under Breyer's reasoning, Section 205 filings are limited to when a public utility seeks to change its tariff for reasons of its own, not when a public utility desires no changes, but a state commission does. As Breyer put it, Section 205 "governs changes that the utility itself proposes, not those that a state regulator requires it to propose."[24]

14. As the court in *Mass. DPU* noted, "the net effect of accepting Massachusetts' argument is to allow a state to do what FERC itself cannot, namely, to change an *interstate* rate practice that FERC has not found unreasonable."[25] That is exactly what OPSI is grasping for in its recommendations. Accordingly, the Commission should reject any proposals for PJM and

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[20] Federal Power Act § 201(f), 16 U.S.C. § 824(f).
[21] 729 F.2d 886 (1st Cir. 1984).
[22] *Id*. at 886.
[23] *Id.*
[24] *Id.*
[25] *Id*. at 888 (emphasis in original).

PJM public utility transmission owners to share their Section 205 filing rights with the states, and instead invite states to file Section 206 complaints proposing tariff changes, consistent with *Mass. DPU*.

15. The *Mass. DPU* court was troubled by the prospect of allowing a state to sidestep its burden under Section 206 through the device of commanding a public utility to make a Section 205 over its objections, effectively seizing the Section 205 filing rights for the state. Allowing a state to require a public utility file a Section 205 tariff change is an end run around the Federal Power Act. That was true in 1984 and remains true in 2026. OPSI seems to have the same objective of proposing tariff changes while dodging their burden under Section 206.
16. The OPSI recommendations essentially exhume the approach rejected in *Mass. DPU* more than forty years ago. The passage of time has not made this idea any more meritorious. OPSI desires that state commissions be able to "present[] their proposals to the Commission on a *level playing field* with PJM and [Transmission Owners]."[26] But that is simply not permissible under the Federal Power Act. The Act limits Section 205 filings to *public utilities*: PJM is a public utility, jurisdictional transmission owners are public utilities, regional state committees and state commissions plainly are not and to the extent they want to seek rate changes, they must do so as complainants under Section 206.
17. If OPSI is instead asking that the Commission delegate to OPSI the power to compel PJM and PJM public utility transmission owners to make Section 205 filings, that approach also fails because the courts have repeatedly held FERC has no power to force public utilities to make Section 205 filings,[27] and FERC cannot delegate to the states more power than the

[26] OPSI Comments at 2 (emphasis added).
[27] *Atlantic City*, 295 F.3d at 10.

Commission itself possesses. In fact, the Commission has no authority to delegate *any* of its Federal Power Act authority to states.[28]

Section 206

18. The other approach to change tariff rates, terms and conditions is Section 206 of the Federal Power Act. States are very familiar with this path and have trodden it many times over the decades since 1935. Section 206 states that:

> [w]henever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate ... or ... any rule, ... practice, or contract affecting such rate ... is ... unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, ... practice, or contract to be thereafter observed and in force, and shall fix the same by order.

16 U.S.C. § 824e(a).

19. While OPSI decries that there is no formal process for states to change PJM's tariff,[29] that is simply not true. The means exists: Section 206. Under Section 206, states are free to file complaints seeking changes to the PJM tariff and have done so many times in the past. In fact, there are currently nine Section 206 complaints pending at the Commission filed by state entities.[30] However, state complainants, like any other complainant and the Commission

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[28] *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).
[29] OPSI Comments at 1-2, 9-11, 13.
[30] *Pa. Pub. Util. Comm'n v. PJM Interconnection, L.L.C.*, Complaint of the Pennsylvania Public Utility Commission, Docket No. EL26-98-000 (filed Aug. 17, 2026); *Md. Energy Admin. v. Baltimore Gas & Elec. Co.*, Complaint by the Maryland State Agencies, Docket No. EL26-87-000 (filed July 2, 2026); *Conn. Dept. of Energy v. ISO New Eng. Inc.*, Complaint of Connecticut State Agencies Challenging RTO Adder Costs and Requesting Termination, Docket No. EL26-79-000 (filed June 11, 2026); *La. Pub. Serv. Comm'n v. Entergy Corp.*, Complaint on Behalf of the Louisiana Public Service Commission, Docket No. EL26-73-000 (filed May 19, 2026); *Me. Off. of the Pub. Advoc. v. Eversource Energy Serv. Co.,* Complaint Against Eversource Energy Service Company, Docket No. EL26-66-000 (filed May 12, 2026); *Md. Off. of People's Couns. v. PJM Interconnection, LLC*, Complaint Requesting Fast Track Processing of the Maryland Office of People's Counsel, Docket No. EL26-63-000 (filed May 7, 2026); *N.D. Pub. Serv. Comm'n v. Midcontinent Indep. Sys. Operator, Inc.*, Complaint of the Concerned Commissions and Requests for Expedited Action and Fast Track Processing, Docket No. EL25-109-000 (filed July 30, 2025); *Joint Consumer Advocs. v. PJM Interconnection, L.L.C.*, Complaint of Joint Consumer Advocates and Request for Fast Track Processing, Docket No. EL25-76-000 (filed Apr. 14, 2025); *Off. of the Ohio Consumers' Couns. v. PJM Interconnection, L.L.C.*, Complaint of the Office of the Ohio Consumers' Counsel to Protect Ohio Consumers Under the PJM Tariff from the Failures of Multiple Agencies to Regulate Hundreds of Millions of Dollars in Monopoly

itself when acting under Section 206, bear the burden of demonstrating the current rate, rule, practice, or contract is unjust and unreasonable or unduly discriminatory or preferential. The inspiration for state proposals for sharing Section 205 filing rights could be a belief that this burden is inconvenient and they would prefer to set it aside. But since a state cannot exercise direct or indirect Section 205 filing rights, the only means it has to change tariff rates, terms and conditions is through a Section 206 complaint, the same means states have used for decades. Looking at the OPSI proposal through the lens of the Federal Power Act, what OPSI is asking for is functionally the ability to obtain relief that is only available under Section 206 while shedding the burden associated with Section 206 that all other complainants – and the Commission itself – are required to bear.

***Atlantic City* Does Not Support Sharing of Section 205 Filing Rights with the States**

20. It is telling that OPSI makes little effort to persuade the Commission that its recommendations are consistent with the Federal Power Act. In particular, it offers no argument its proposals are allowed under Section 205. Inexplicably, OPSI declares its recommendations are consistent with *Atlantic City*,[31] pointing to a stray sentence in the decision, namely: "Of course, utilities may choose to voluntarily give up, by contract, some of their rate-filing *freedom* under section 205."[32] This attempt is at best misleading. First, the only sharing of Section 205 filing rights discussed in *Atlantic City* was the allocation of Section 205 filing rights between PJM, a public utility, and PJM public utility members.[33] The court was not troubled at the sharing of Section 205 filing rights *between* public utilities,

Electric Transmission Charges for "Supplemental Projects" Planned by AEP, AES, Duke, and FirstEnergy and Request for Fast-Track Processing, Docket No. EL23-105-000 (filed Sept. 28, 2023).

[31] OPSI Comments at 12.

[32] *Id.* (quoting *Atlantic City*, 295 F.3d at 10 (emphasis added)).

[33] *Atlantic City*, 279 F.3d at 9, 11.

especially where one public utility would be operating the assets of other public utilities. That does not mean, however, that the court embraced the idea of sharing Section 205 filing rights with entities that are not public utilities.

21. Second, the quote is misrepresented as implying *Atlantic City* blesses the notion of sharing Section 205 *filing rights* with state entities. But that is not what the quote says. The quote does not refer to public utilities giving their *filing rights* to someone else, but only to public utilities "giv[ing] up … some of their *rate-filing freedom* under section 205." "What "rate-filing freedom" was the court envisioning? Not the sharing of Section 205 filing rights to a non-public utility, to be sure. It was a public utility relinquishing its right to make unilateral changes in rates for a time as part of a fixed rate contract.[34] OPSI's interpretation would rewrite the sentence to read "Of course, utilities may choose to *voluntarily give, by contract*, some of their *rate-filing* <u>*rights to a non-public utility*</u> under section 205."

22. In my view, the OPSI recommendations are squarely inconsistent with *Atlantic City*. The central holding of *Atlantic City* is that "the power to initiate rate changes [under Section 205] rests with the utility and cannot be appropriated by FERC."[35] That is true whether FERC seeks to appropriate a public utility's Section 205 filing rights for itself or for the use of a regional state committee and state commissions, as OPSI seeks. In harsh language the *Atlantic City* court concluded "FERC thereby eliminated the very thing that the statute was designed to protect – the ability of the utility owner to 'set the rates it will charge prospective customers, and change them at will,' subject to review by the Commission."[36]

[34] *Id*. at 11.
[35] *Id*. at 10.
[36] *Id.* (quoting *City of Cleveland v. FPC*, 525 F.2d 845, 855 (D.C. Cir. 1976)).

23. The OPSI recommendations would eliminate the ability of PJM and its public utility transmission owner members to "set the rates [they] will charge" and "change them at will," subject to Commission review. Instead, these public utilities may be compelled to file Section 205 tariff changes they actively oppose and believe unjust and unreasonable at the behest of states, in violation of their clear rights under the Federal Power Act.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Governance and Stakeholder Process Reforms	))))	**Docket No. AD26-7-000**

VERIFICATION

I, Joseph T. Kelliher, hereby state, under penalty of perjury, that the statements contained in the foregoing Affidavit on behalf of the Electric Power Supply Association are true and correct to the best of my knowledge, information, and belief.

Joseph T. Kelliher