

150 FERC ¶ 61,088  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
Norman C. Bay, and Colette D. Honorable.

PJM Interconnection, L.L.C.

Docket No. ER15-578-000

ORDER ACCEPTING TARIFF FILING

(Issued February 13, 2015)

1. On December 4, 2014, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> PJM Interconnection, L.L.C. (PJM) submitted proposed revisions to the code of conduct rules governing prohibited investments by its employees, officers, board members, their spouses, and their dependent children (collectively, PJM Personnel) set forth in the PJM Amended and Restated Operating Agreement (Operating Agreement). As discussed below, the Commission accepts PJM's proposed revisions, effective February 16, 2015, as requested.

**I. Background**

2. In Order No. 888,<sup>2</sup> the Commission set forth 11 Principles for use in assessing proposals for the formation of Independent System Operators (ISO) to ensure that they are independent of market participants. Principle No. 2 states that “[a]n ISO and its employees should have no financial interest in the economic performance of any power market participant,” the ISO “should adopt and enforce strict conflict of interest standards,” and “[e]mployees of the ISO should also be financially independent of market

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

participants.”<sup>3</sup> Further, in Order No. 2000, the Commission established an independence standard for Regional Transmission Organizations (RTO) to ensure that these entities would provide transmission service and operate in a non-discriminatory manner and stated that an RTO “[m]ust be independent of any entity whose economic or commercial interests could be significantly affected by the RTO’s actions or decisions.”<sup>4</sup>

## II. Details of the Filing

3. PJM states that, consistent with the Commission’s regulations established in Order No. 2000, PJM adopted and administers a code of conduct that restricts PJM Personnel from directly owning the securities of its Members and Market Participants, except under specified limited exceptions.<sup>5</sup> PJM explains that “in recent years non-traditional companies whose primary businesses cannot be described objectively as electricity or electricity-related have joined PJM in increasing numbers.”<sup>6</sup> PJM adds that its current rules require PJM Personnel to divest securities “that present no real conflict of interest concern” and that the Commission has recognized the issue poses recruiting and retention problems, particularly regarding Board Members.<sup>7</sup> PJM asserts that, as a result, its current rules meet “no underlying policy or conflict of interest objective,” where such publicly traded companies’ participation and interest in PJM is commercially and financially *de minimis*.<sup>8</sup>

4. In its filing, PJM seeks to modify its existing rules that prohibit ownership of securities of any market participant or any of their affiliates to instead prohibit ownership of prohibited securities. PJM explains that it is proposing to include these provisions in

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<sup>3</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,730-32.

<sup>4</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>5</sup> PJM Transmittal at 2-3 (noting that PJM does not file its Code of Conduct with the Commission because it addresses many subjects outside the Commission’s regulatory oversight and jurisdiction).

<sup>6</sup> *Id.* at 3-4 (explaining that such non-traditional market participants include large industrial companies, large consumer product retailers, and financial institutions).

<sup>7</sup> *Id.* at 4 (citing *New York Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,294, at P 10 (2013)).

<sup>8</sup> *Id.*

the Operating Agreement for the first time, instead of in the Code of Conduct, because, unlike the former, the latter is not filed with the Commission. PJM further explains that the proposed rules are substantially the same as those accepted by the Commission for the New York Independent System Operator, Inc. (NYISO)<sup>9</sup> and the Midcontinent Independent System Operator, Inc. (MISO).<sup>10</sup> According to PJM, the proposed rules allow PJM Personnel to invest in companies that have a *de minimis* relationship with PJM and the electric sector, as determined by the same three prong test accepted in *NYISO* and *MISO*.<sup>11</sup> PJM explains that the proposed definition of Prohibited Securities establishes a series of screens—“[a] company that passes each of the three screens would have only a *de minimis* interest in the PJM market and investment in its securities should be permitted.”<sup>12</sup> To include these rules in the Operating Agreement, PJM proposes a new section, “Financial Interests,” and two new corresponding definitions, “Prohibited

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<sup>9</sup> *New York Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,294 (2013), *order on reh’g*, 147 FERC ¶ 61,191 (2014) (*NYISO*).

<sup>10</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,265 (2014) (*MISO*).

<sup>11</sup> PJM proposes to define Prohibited Securities to be the securities of a PJM Member, Eligible Customer, or pre-qualified Nonincumbent Developer, or their Affiliates if: (1) the primary business purpose of the Member or Eligible Customer, or their Affiliates, is to buy, sell or schedule energy, power, capacity, ancillary services or transmission services as indicated by an industry code within the “Electric Power Generation, Transmission, and Distribution” industry group under the North American Industry Classification System (“NAICS”) or otherwise determined by the Office of the Interconnection; (2) is a pre-qualified Nonincumbent Developer; (3) the total financial settlements regarding the use of transmission capacity of the Transmission System and/or transactions in the centralized markets that the Office of the Interconnection administers under the Tariff and the Operating Agreement for all Members or Eligible Customers affiliated with the publicly traded company during its most recently completed fiscal year is equal to or greater than 0.5% of its gross revenues for the same time period; or (4) the total financial settlements regarding the use of transmission capacity of the Transmission System and/or transactions in the centralized markets that the Office of the Interconnection administers under the Tariff and the Operating Agreement for all Members or Eligible Customers affiliated with the publicly traded company during the prior calendar year is equal to or greater than 3% of the total transactions for which PJMSettlements is a Counterparty. PJM Transmittal at 7.

<sup>12</sup> PJM Transmittal at 12.

Securities” and “Securities.”<sup>13</sup> PJM adds that it received unanimous stakeholder support for the proposed Operating Agreement changes to implement the proposed new rules.

5. PJM explains that, as in NYISO’s rules, the definition of Prohibited Security reserves to PJM the right to designate any company as a prohibited investment based on PJM’s evaluation of the company’s primary business activities notwithstanding the NAICS designation. PJM further explains that Prohibited Securities include the securities of pre-qualified Nonincumbent Developers eligible to be a Designated Entity under PJM’s Regional Transmission Expansion Planning Protocol (RTEP), as per *MISO*. PJM explains that PJM may select pre-qualified Nonincumbent Developers as a Designated Entity to build transmission projects pursuant to PJM’s RTEP.<sup>14</sup> In addition, PJM is required to compile and maintain a list of the Prohibited Securities publicly traded, post this list for all employees, and distribute the list to all PJM Board Members. PJM also proposes to define Securities to mean negotiable or non-negotiable investment or financing instruments that can be sold and bought including bonds, stocks, debentures, notes and options. PJM states that this definition is consistent with definitions of the same term in the NYISO and MISO tariffs and is consistent with the definition of “security” in the Securities Act of 1933.<sup>15</sup>

6. PJM states that proposed new section Financial Interests incorporates additional rules related to the financial interest restrictions that have been in its Code of Conduct with changes to incorporate the new definitions. Specifically, PJM Personnel shall divest Prohibited Securities within six (6) months of: (i) the time of a person’s affiliation or employment; (ii) the time a new Member is added, a new Eligible Customer begins taking service under the Tariff, or a Nonincumbent Developer is pre-qualified as eligible to be a Designated Entity; or (iii) the time of receipt of such Prohibited Securities (e.g. marriage, bequest, gift, etc.). The provisions also state that a Board Member shall disclose to the PJM Board if the Board Member is aware that he or she, or an immediate

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<sup>13</sup> PJM Interconnection, L.L.C., Intra-PJM Tariffs, [OA Table of Contents, OA - Table of Contents, 5.0.0, O-P, OA Definitions O - P, 7.0.0, S-T, OA Definitions S - T, 5.0.0, OA 10.2.1, and OA 10.2.1 Financial Interests, 0.0.0](#).

<sup>14</sup> PJM Transmittal at 8-9; *see Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

<sup>15</sup> PJM Transmittal at 10 (citing Securities Act of 1933, 15 U.S.C. § 77b(a)(1) (2012)).

family member, has a financial interest in a Member, Eligible Customer or Nonincumbent Developer, or their Affiliates, that is subject to a matter before the PJM Board. The chair of the PJM Board Governance Committee and the Office of the Interconnection legal counsel shall consult with the Board Member to determine whether the PJM Board Member should be recused from the PJM Board deliberations and decision making regarding the matter before the PJM Board.

### **III. Notices of Filings and Responsive Pleadings**

7. Notice of PJM's filing was published in the *Federal Register*, 79 Fed. Reg. 73,289 (2014), with protests and interventions due on or before December 26, 2014. None was filed.

### **IV. Discussion**

8. We accept PJM's proposed revisions to its Operating Agreement, effective February 16, 2015, as requested.<sup>16</sup> We find that the addition of the proposed Financial Interests provision, and related definitions, to the Operating Agreement with its identification of Prohibited Securities, requirements governing divestiture and recusal, and other related requirements, for PJM Personnel satisfies the independence requirements for RTOs in accordance with Commission regulations,<sup>17</sup> and is just and reasonable.

9. We find that the proposed revisions to the Operating Agreement are a just and reasonable approach to addressing the challenge of recruiting and retaining directors and employees in light of both our concern with protecting PJM's independence and our recognition that the pre-existing rules restricting investments were developed prior to the expansion of market participation beyond traditional, electric sector companies. PJM's proposal should continue to safeguard PJM's independence by prohibiting PJM Personnel from holding securities of market participants that are active in the PJM market, specifically those that are either electric sector companies, companies whose PJM market activity is significant to the company's revenues, or companies whose PJM market activity is significant to PJM, while avoiding unnecessary divestitures. The proposed provisions adopted here, including the definition of Prohibited Securities, are also consistent with those that the Commission has recently accepted in *NYISO* and *MISO*.

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<sup>16</sup> This filing does not change the requirements of 18 C.F.R. § 35.34(j)(1)(i) (2014), prohibiting "financial interests in any market participant," which includes interests in hedge funds and private equity offerings.

<sup>17</sup> See 18 C.F.R. § 35.34(j)(1) (2014).

We also find that the proposed recusal requirements for directors are just and reasonable and provide an additional safeguard of independence.

The Commission orders:

The proposed revisions to the PJM Operating Agreement are hereby accepted, effective February 16, 2015, as requested.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.